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No. 82-432

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

LOCAL NO. 82, FURNITURE and PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, and PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82; GEORGE HARRIS, PRESIDENT, LOCAL NO. 82; PHILLIP PIEMONTESE, CHAIRMAN of the ELECTION COMMITTEE of LOCAL NO. 82; and JOHN DOE, JAMES DOE and JEROME DOE, MEMBERS of the ELECTION COMMITTEE of LOCAL NO. 82.

Petitioners,

v.

JEROME CROWLEY, ANTHONY COYNE, JOSEPH FAHEY, ROBERT LUNNIN, JAMES HAYES, GERALD OWENS, JOHN LYNCH, JOSEPH TRASK, JOSEPH MONTAGNA, and DENNIS BATES,

Respondents.

APPENDICES TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 80-2680-K

JEROME [redacted]OWLEY, ANTHONY COYNE, JOSEPH FAHEY, ROBERT LUNNIN, JAMES HAYES, GERALD OWENS, JOHN LYNCH, JOSEPH TRASK, and JOSEPH MONTAGNA,
Plaintiffs

v.

LOCAL NO. 82, FURNITURE and PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, and PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82; GEORGE HARRIS, PRESIDENT, LOCAL NO. 82; PHILLIP PIEMONTESE, CHAIRMAN of the ELECTION COMMITTEE OF LOCAL NO. 82; and JOHN DOE, JAMES DOE and JEROME DOE, MEMBERS of the ELECTION COMMITTEE of LOCAL NO. 82,
Defendants

July 13, 1981

MEMORANDUM

I. Introduction and Procedural History of the Litigation

This case arises out of a dispute concerning a meeting of the membership of the Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers, Local No. 82 ("Local 82"), which is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("the International"), on November 9, 1980, at which the nomination of candidates for the Local's Executive Board was

conducted. Plaintiffs, nine members of Local 82, brought this action on behalf of themselves and two classes [1] of Local members against the Local, Bart Griffiths, its secretary-treasurer, George Harris, its president, and Phillip Piemontese, the chairman of its election committee.[2] Plaintiffs allege that defendants violated Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 411-415 ("LMRDA" or "the Act") by denying plaintiffs their rights to attend union meetings and nominate candidates on an equal basis with other Local members, and to speak freely on matters relating to union business without reprisal. In addition, plaintiffs claim that the union rule that only members who have paid their dues on time for the twenty-four consecutive months before the nominations meeting may be candidates for Local office ("the 24 month rule")[3] constitutes an un-

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[1] This court has not been requested to certify either of the proposed classes.

[2] Unidentified members of Local 82's election committee were also named as defendants.

[3] Article II, section 4(a)(1) of the 1976 Constitution of the International Union ("International Constitution") provides that:

> To be eligible for election to any office in a Local Union, a member must be in continuous good standing in the Local Union in which he is a member and in which he is seeking office, and actively employed at the craft within the jurisdiction of such Local Union, for a period of twenty-four (24) consecutive months prior to nomination for said office and must be eligible to hold the office if elected. "Continuous good standing" means compliance with the provisions of Article X, Section 5 concerning the payment of dues for a period of twenty-four (24) consecutive months, together with no interruptions in active membership in the Local Union for which office is sought because of suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments. . . .

See also Article VI, section 3(b) of the "Constitution and By-Laws of Local 82" ("Local By-laws"):

> (b) Every member in good standing, by the payment of his dues on or before the last business day of the current month,

reasonable restriction on plaintiffs' right to seek union office in violation of Title IV of the Act, 29 U.S.C. § 481 (e). Defendants argue that because the conduct at issue bears upon the procedures for conducting union elections, plaintiffs' exclusive remedy is to file a complaint with the Secretary of Labor under Title IV of the LMRDA, and that 29 U.S.C. § 483 and the Supreme Court's decision in *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), deny this court jurisdiction over this action.

The Local's election was to be completed December 13, 1980. On December 12, 1980, after hearing, the court entered a temporary restraining order to avoid irreparable harm to the plaintiffs and to preserve both the status quo and the court's jurisdiction. *See* note 12, *infra*. The restraining order provided that pending further order of the court:

> The ballots to be received by Local 82 from P.O. Box 530, East Milton, Massachusetts, on December 13, 1980 at 9:00 a.m. and any other ballots received by Local 82 in any other way shall not be counted but shall be collected, sealed, and delivered immediately thereafter to an officer of this court in whose custody they shall remain until further order of the court. If the court determines, after hearing, that

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in accordance with the International Constitution, and who has been in such continuous good standing for each consecutive month in the twenty-four (24) month period immediately prior to nominations and who has attended at least fifty percent (50%) of the regular or divisional meeting of the Local Union during the twenty-four (24) consecutive months prior to nomination, shall be eligible to hold office, if he is otherwise qualified under the International Constitution and these By-Laws. . . . No member shall lose his good standing status for any month in which his dues have been withheld by his employer for payment to the Local Union pursuant to his voluntary authorization provided for in a collective bargaining agreement by reason of delay or default in the payment of such dues by the employer to the Local Union. . . .

the ballots collected on December 13, 1980 should be counted, they shall be counted under the same conditions and limitations prevailing on December 13, 1980, unless otherwise ordered by this court.

The court conducted evidentiary hearings on plaintiffs' motion for a preliminary injunction for five days in December 1980. On January 9, 1981, counsel for defendants wrote to the court stating "that the union is prepared to hold a new nomination meeting and mail ballot election, with the permission of the Court." On January 15 and 22, 1981, defendants filed stipulations [4] concerning how Local 82 would conduct the new election.

During hearings in January 1981, it became apparent that the parties could not reach an agreement on the terms and conditions under which a new nominations meeting and election would be conducted. On January 30, 1981, plaintiffs filed a "Motion to Amend Complaint to Conform to the Evidence," [5] which sought to add claims that since September 1976 defendants had increased union dues without complying with 29 U.S.C. § 411(a)(3), and that defendants had violated the equal rights and free speech provisions of Title I, 29 U.S.C. § 411(a)(1) & (2) by applying the 24 month rule in a discriminatory fashion and in retaliation for plaintiffs' expression of views critical of the defendant incumbent officers of Local 82. The

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[4] In response to explicit and prolonged inquiry by the court, defendants' counsel stated that the stipulations were not offers of settlement that would have no legal effect if they were not agreed to by plaintiffs, but instead were binding representations to which defendants would adhere regardless of plaintiffs' position. *See* Tr. February 27, 1981 hearing, pp. 9-12. On the basis of these stipulations, defendants argue that plaintiffs' Title I claims are moot and that this court lacks jurisdiction to grant additional relief. *But see* part II-B, *infra*.

[5] Plaintiffs had previously amended their complaint on December 1, 1980 before defendants had filed their answer. *See* Fed. R. Civ. P. 15(a).

motion to amend included an additional prayer for relief requesting that the court declare that

> all dues increases by Local 82 since September 1976 are invalid and that any member of Local 82 is eligible for union office if he is in compliance with the 24 month rule once all his dues payments in excess of $9.00 [the dues rate in effect before September 1976] are credited prospectively towards subsequent dues payments, and he is otherwise eligible for union office.

Defendants opposed the motion to amend, contending that the issues raised by the motion, in particular the legality of dues increases implemented by Local 82 since September 1976, had not been tried by the parties during the hearings on the motion for preliminary injunction. At a hearing on February 27, 1981, the court found that evidence concerning the dues claim had been offered at the earlier hearings, but that the dues claim had not been fully litigated. Because the relief requested on the dues claim would affect candidate eligibility in a new election, the court allowed the motion to amend, and gave the parties an opportunity to present additional evidence at a hearing which was conducted on March 6, 1981. The court also heard argument on defendants' motion to dismiss the amended complaint at the March 6th hearing.

After determining for the reasons set forth in part III-B, *infra*, that a new nominations meeting and election must be conducted under the supervision of a neutral third party, on February 12 and April 21, 1981 the court issued proposed orders concerning the conduct of the election and invited the parties to submit their positions concerning the terms of the order. Extensive discussions on the form of the order were conducted at conferences on February 20 and 27, and April 23, 1981. *See* part V, *infra*. At the conclusion of the latter conference, the parties were given additional time to submit their posi-

tions concerning defendants' request for a stay pending appeal.

The remainder of this memorandum is organized as follows: Part II addresses the jurisdictional issues raised in this action. Part III sets forth the court's findings of fact and conclusions of law concerning the availability of preliminary relief on plaintiffs' claims that the manner in which defendants conducted the November 9, 1980 nominations meeting violated Title I of the LMRDA. The court's findings and conclusions on plaintiffs' dues claim are stated in part IV. Finally, issues relating to the form of the court's order, including defendants' request for a bond and stay pending appeal, are addressed in part V.

II.

Jurisdiction

A. The Impact of Title IV on the Court's Jurisdiction

For the purposes of resolving the jurisdictional questions now before the court, plaintiffs' claim may be divided into four categories:[6] (1) claims that by refusing to allow some of the plaintiffs to attend the November 9, 1980 nominations meeting and refusing to allow other plaintiffs to nominate candidates of their choice for union office in retaliation for plaintiffs' criticism of the incumbent officers, defendants violated Title I of the Act by denying plaintiffs their "equal rights . . . to nominate candidates [and] to attend membership meetings," 29 U.S.C.

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[6] In addition to the claims relevant to the motion for a preliminary injunction, plaintiffs also alleged that defendants disciplined plaintiff Robert Lunnin without complying with the due process requirements set forth in 29 U.S.C. § 411(a)(5), and in retaliation for Lunnin's exercise of his right to free speech guaranteed by 29 U.S.C. § 411(a)(2) (Complaint ¶¶ 51-52). However, on January 15, 1981, the parties informed the court that Teamsters Joint Council 10 overturned the disciplinary sanctions imposed on Lunnin.

§ 411(a)(1),[7] and their rights "to meet and assemble freely with other members, and to express any views . . . [including] . . . views upon candidates . . . ." 29 U.S.C. § 411(a)(2)[8] ("discrimination and free speech claims") (Complaint ¶¶ 43-48); (2) claims that the 24 month rule on its face violates Title I because it has a disparate impact on Local members who pay their dues directly to the Local and claims that defendants applied the 24 month rule in a discriminatory fashion in retaliation for plaintiffs' expression of their views in violation of 29 U.S.C. § 411(a)(1) and (2) ("Title I 24 month rule claims") (Complaint ¶ 50, Amended Complaint ¶¶ 54-55); (3) the claim that the 24 month rule consitutes an unreasonable restriction on nominations and eligibility for union candidacy in violation of Title IV of the LMRDA, 29 U.S.C.

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[7] 29 U.S.C. § 411(a)(1) states that:

> Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

[8] 29 U.S.C § 411(a)(2) states that:

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organizations his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

§ 481(e)[9] ("Title IV 24 month rule claim") (Complaint ¶ 49); and (4) the claim that defendants increased local dues without complying with 29 U.S.C. § 411(a)(3)[10] ("dues claim") (Amended Complaint ¶ 53).

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[9] 29 U.S.C. § 481(e) states that:

> In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

[10] 29 U.S.C. § 411(a)(3) provides that:

> Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—
>
> (A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by

Defendants argue that because plaintiffs' discrimination and free speech claims and their Title I and Title IV 24 month rule claims arose out of a dispute concerning a nominations meeting conducted in preparation for a union election, plaintiffs' exclusive remedy is to file a complaint with the Secretary of Labor pursuant to Title IV of the LMRDA, 29 U.S.C. § 481 *et seq.*[11] 29 U.S.C. § 483 states that "[t]he remedy provided by this subchapter [Title IV] for challenging an election already conducted shall be exclusive." *See Dunlop* v. *Bachowski*, 421 U.S. 560,

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majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

[11] 29 U.S.C. § 482(a) gives union members who have exhausted available internal union remedies (or who have invoked internal remedies without obtaining a final decision for "three calendar months") the right to file a complaint with the Secretary of Labor alleging the violation of any provision of 29 U.S.C. § 481 [which sets forth standards and procedures governing nominations and elections for union offices. *See* n. 9, *supra*]. The Secretary is required to investigate such a complaint, "and if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days of the filing of such complaint, bring a civil action . . . to set aside the invalid election . . . and to direct the conduct of an election . . . under the supervision of the Secretary . . . ." 29 U.S.C. § 482(b).

566-67 (1975); *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528, 530-36 (1972).

However, at least with respect to actions challenging pre-election conduct,[12] Title I of the LMRDA establishes an alternative enforcement mechanism for remedying conduct interfering with a member's right to engage in the activities associated with union democracy. 29 U.S.C. § 412 provides that "[a]ny person whose rights secured by the provisions of this subchapter [29 U.S.C. § 411] have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate." *See Kupau* v. *Yamamoto*, *supra* note 12, 622 F.2d at 454-56; James, Union Democracy and the

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[12] There is language in *Dunlop* v. *Bachowski*, *supra*, suggesting that Title I relates only to pre-election conduct:

> Certain LMRDA provisions concerning pre-election conduct, 29 U.S.C. §§ 411-413 and 481(c) are enforceable in suits brought by individual union members. Provisions concerning the conduct of the election itself, however, may be enforced only according to the post-election procedures specified in 29 U.S.C. § 482. Section 483 is thus not a prohibition against judicial review but simply underscores the exclusivity of the § 482 procedures in post-election cases.

421 U.S. at 566-67. Although there is some support for the proposition that section 483 bars a Title I action brought after an election, *see McDonough* v. *Local 825, International Union of Operating Engineers*, 470 F.2d 261 (3d Cir. 1972), such a result is inconsistent with the language of 29 U.S.C. § 411(a)(1) granting union members the equal right "to vote in elections." *See Kupau* v. *Yamamoto*, 622 F.2d 449, 456-57 (9th Cir. 1980). However, this question need not be addressed in the instant case both because the suit is addressed to pre-election conduct, *id.*, and because the court issued its temporary restraining order barring the completion of the election. *But cf. McDonough* v. *Local 825, supra; New Action Coalition* v. *Local 2, United Federation of Teachers*, 510 F. Supp. 1208, 1211 (S.D.N.Y. 1981); *Laski* v. *International Organization of Masters, Mates & Pilots*, 502 F. Supp. 134, 135-36 (S.D.N.Y. 1980) (where ballots had already been sent to local members, 29 U.S.C. § 483 barred suit under Title IV challenging conduct of election.)

LMRDA: Autocracy and Insurgency in National Union Elections, 13 Harv. C.R.-C.L. L. Rev. 247, 269, 316-17 (1978).

In *Calhoon* v. *Harvey*, *supra*, the Supreme Court addressed the relationship between claims arising under Titles I and IV of the LMRDA. There the plaintiffs had alleged that a seamen's union rule providing that to be eligible for nomination or election to union office, a person must have been a member of the union for five years and must have served 180 days or more of sea time aboard qualified vessels in each of two of the three preceding years denied plaintiffs their equal right to nominate candidates in violation of 29 U.S.C. § 411(a)(1). The Supreme Court affirmed the dismissal of the suit by the district court for want of jurisdiction, holding that plaintiffs had failed to state a claim under 29 U.S.C. § 411(a)(1), and "that possible violations of Title IV of the Act regarding eligibility are not relevant in determining whether or not a district court has jurisdiction under [29 U.S.C. § 412]." 379 U.S. at 139-40. In so doing, the Court rejected the plaintiffs' contention that 29 U.S.C. § 411(a)(1) "guarantees members . . . a right to nominate anyone without regard to valid union rules," holding that the provision "is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote." *Id.* at 138-39.

Plaintiffs argue that even though *Calhoon* v. *Harvey* precludes a federal court from taking jurisdiction pursuant to 29 U.S.C. § 412 of an action based solely on violations of Title IV of the Act, the court should exercise "pendent jurisdiction" over plaintiffs' Title IV claim in order to avoid multiple proceedings arising out of the same controversy because plaintiffs' Title I claims already provide a sufficient basis for jurisdiction under 29 U.S.C. § 412. Although such a result would fulfill the Congressional objective of centralizing "in a single proceeding such litigation as might be warranted with respect to a single election," *Trbovich* v. *United Mine Workers*,

supra, 404 U.S. at 532, the proposition that individual union members may bring a pre-election suit challenging union regulations on Title IV grounds was rejected in *Calhoon* v. *Harvey*, *supra*, 379 U.S. at 140:

> Section 402 of Title IV [29 U.S.C. § 482] . . . *sets up an exclusive method for protecting Title IV rights*, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV. Upon complaint the Secretary investigates and if he finds probable cause to believe that Title IV has been violated, he may file suit in the appropriate district court. It is apparent that Congress decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest. . . . *In so doing Congress . . . decided not to permit individuals to block or delay union elections by filing federal-court suits for violations of Title IV.*

(Emphasis supplied, citation and footnote omitted.) Therefore, applying the principles articulated in *Calhoon* v. *Harvey* to the instant case, I conclude that this Court lacks jurisdiction over plaintiffs' Title IV 24-month rule claim, as well as their claim that the 24-month rule on its face violates Title I because it necessarily "discriminates" against "spares," *i.e.*, members of the union who are not regular full-time employees and who therefore are very unlikely to be on "check-off" and to pay their dues on time each month. In *Calhoon*, the Supreme Court considered and rejected this latter claim that "discrimination" based on the "disparate impact" of a uniformly applied rule upon union members states a violation of Title I:

> It is true [the plaintiffs] were denied their request to be candidates, but that denial was not a discrimination against their right to nominate [themselves], *since the qualifications were required equally of all members.*

Id. at 139 (emphasis supplied). *See Driscoll* v. *International Union of Op. Eng., Local 139*, 484 F.2d 682, 688-89 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974).

However, I conclude that this court does have jurisdiction over plaintiffs' other discrimination and free speech claims, including their claims that defendants applied the 24 month rule in a discriminatory fashion in retaliation for plaintiffs' exercise of their right to speak freely. Where "a union member has been discriminated against in the exercise of his Title I rights," a federal court has jurisdiction over his Title I claims under 29 U.S.C. § 412, regardless of whether the member may also have claims arising under Title IV. *Kupau* v. *Yamamoto*, *supra*, 622 F.2d at 455; *McNail* v. *Amalgamated Meat Cutters & Butcher Workmen of North America*, 549 F.2d 538, 540-51 (8th Cir. 1977); *Schonfield* v. *Penza*, 477 F.2d 899 (2d Cir. 1973); *Depew* v. *Edmiston*, 386 F.2d 710 (3d Cir. 1967). *See also Bunz* v. *Moving Picture Machine Operators, Local 224*, 567 F.2d 1117, 1120-24 (D.C. Cir. 1977).

B. The Effect of Defendants' Stipulation

Defendants argue that because of their binding stipulation that they will conduct a new nominations meeting and election, *see* note 4, *supra*, plaintiffs' remaining Title I claims involving the disputed election are moot, and therefore this court lacks jurisdiction to enter a preliminary injunction.[13] Defendants' argument is plainly without merit. "[T]he voluntary cessation of allegedly illegal conduct . . . does not make [a] case moot," *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 632 (1953), unless the

[13] Because plaintiffs have requested costs and attorney's fees, which this court, in its discretion, may award to prevailing plaintiffs in Title I actions, *Hall* v. *Cole*, 412 U.S. 1 (1973), the court would still have jurisdiction over plaintiffs' Title I election claims even if injunctive relief were no longer available because of a change in circumstances. *See* 13 C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure § 3533, at 273 (1975) (collecting cases).

defendant can meet its "heavy" burden of demonstrating that "there is no reasonable expectation that the wrong will be repeated." *Id.* at 633 (footnote omitted); *County of Los Angeles* v. *Davis*, 440 U.S. 625, 631 (1979). Where a defendant has voluntarily terminated unlawful conduct after litigation has commenced, "[t]he case should not be held moot unless it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Seay* v. *McDonnell Douglas Corp.*, 533 F.2d 1126, 1130 (9th Cir. 1976), (quoting *Pacific Maritime Ass'n* v. *International Longshoremen & Warehousemen's Union*, 454 F.2d 262 (9th Cir. 1971)). Because I conclude that plaintiffs have established a substantial likelihood that defendants violated Title I less than two months before offering their stipulation, *see* part III-B, *infra*, and defendants have a personal interest in retaining office in the forthcoming election, I cannot find that future violations of Title I could not reasonably be expected to occur. *See Lodge 1380, Brotherhood of Railway, Airline and Steamship Clerks* v. *Dennis*, 625 F.2d 819, 822-23 (9th Cir. 1980). Therefore, defendants' stipulation does not moot this case or deprive the court of power to grant injunctive relief.

C. Plaintiffs' Failure to Exhaust Internal Union Remedies

Defendants argue that the court lacks jurisdiction over this action because plaintiffs have failed to exhaust available internal union remedies.[14] "[W]hether or not a plain-

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[14] 29 U.S.C. § 411(a)(4) states that:

> No labor organization shall limit the right of any member thereof to institute an action in any court . . . *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof . . . .

tiff will be required to utilize his internal union appeals is a matter within the discretion of the trial judge." *Semancik* v. *United Mine Workers of America, District #5*, 466 F.2d 144, 150 (3d Cir. 1972). A plaintiff's failure to exhaust available internal remedies will be excused in three situations: (1) where the right of appeal would be "inadequate, illusory or futile," *Keefe Bros.* v. *Teamsters Local Union No. 592*, 562 F.2d 298, 303 (4th Cir. 1977); (2) where local members do not receive adequate notice of the administrative remedies available to them, *Steib* v. *New Orleans Clerks & Checkers Local No. 1497*, 436 F.2d 1101, 1106 (5th Cir. 1971); and (3) where irreparable harm to the plaintiff will result which will adversely affect his or her employment or the exercise of rights secured by the LMRDA. *Semancik, supra*, 466 F.2d at 150-51; *Bradford* v. *Textile Workers of America, AFL-CIO*, 563 F.2d 1138, 1140-41 (4th Cir. 1977).

In the instant case, plaintiffs filed a protest concerning the conduct of the nominations meeting with Local 82, with Teamsters Joint Council 10 (which is the regional body containing Local 82), and with the International Union. On November 20, 1980, Local 82 denied the election protests. This action was filed December 1, 1980. A hearing before Joint Council 10, scheduled for December 23, 1980, was canceled "because of legal action pending in the United States District Court." To date, no

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Article XIX, § 12(a) of the International Constitution provides that:

> Every member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body or any officer or employee thereof.

action has been taken on the protests by either Joint Council 10 or the International Union.

In addition, plaintiffs do not dispute that they failed to pursue any of the intra-union remedies that may[15] exist for challenging the legality of dues increases implemented since September 1976. However, plaintiffs' dues claim is essentially simply a claim that in fashioning preliminary relief for defendants' failure to conduct the nominations meeting in accordance with Title I, this court should not enforce eligibility criteria that rely upon a dues formula which, they contend, violates 29 U.S.C. § 411(a)(3). Because ordering a new election is necessary to prevent irreparable harm to plaintiffs' free speech rights within the union, *see* part III-B, *infra; Bradford* v. *Textile Workers*, *supra* 563 F.2d at 1140-41, the court concludes that plaintiffs' failure to exhaust all internal union remedies before filing this action does not bar their claims for relief.

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[15] Plaintiffs contend that no internal union remedy is available for challenging the dues increases at issue here. Article XIX of the International Constitution establishes the procedures by which charges may be brought against "members, officers, elected Business Agents, Local Unions, Joint Councils or other subordinate bodies" for "[v]iolation of any specific provision of the Constitution or failure to perform any of the duties specified thereunder." Art. XIX, § 6(1). In the absence of any evidence that the procedures set forth in article XIX are inadequate, the court must conclude that the provision does create a means for securing relief from a dues increase implemented in violation of article X, section 3 of the International Constitution. However, defendants have not offered evidence that any procedure exists by which a union member may dispute the legality of a provision of the International Constitution. In light of article III, section 1 of the International Constitution, which states that "The International Constitution shall be the supreme governing authority of the International Union . . . ," and the position taken by the defendants in this action, any attempt to pursue an internal union remedy challenging the legality of article X, section 3 of the International Constitution under 29 U.S.C. § 411(a)(3) is likely to be futile.

III.

Plaintiffs' Claims Concerning The Nominations Meeting

A. Findings of Fact

During the two months before the November 9, 1980 nominations meeting, several of the plaintiffs were outspokenly critical of the incumbent officers of Local 82 and encouraged other members to attend union meetings. At the September 1980 meeting of Local 82, plaintiff Robert Lunnin demanded that the forthcoming union elections be conducted by open ballot instead of the mail-in procedure used by Local 82. Lunnin, plaintiff Anthony Coyne, and others obtained over 100 signatures on petitions demanding "an open free election done in the democratic process," and submitted them to Local 82's Executive Board. On September 16, 1980, the Executive Board decided to conduct the election by mail ballot. In addition, at the September 1980 meeting of the Local, plaintiffs John Lynch, James Hayes, and Lunnin criticized the incumbents for not distributing copies of the International Constitution to members of Local 82. As a result of their dissatisfaction with the incumbents, several of the plaintiffs, including John Lynch, announced their intention to seek office in the upcoming election.

Notices of the November 9, 1980 nominations meeting were not sent to the members of Local 82 as required by article VI, § 2 of the Local By-laws.[16] Instead, notices

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[16] Article VI, § 2 provides:

> Notice of Rules, Nominations, Meeting and Election. At least twenty (20) days prior to the date of the nomination meeting, specific notice of the date, time, and place of the nomination and the offices to be filled shall be mailed or shall be published in any Local Union publication mailed to the membership (except that the notice of nominations, and election may be combined); each member shall be advised in such notice that the election rules are set forth in the By-Laws which are available upon request.

Plaintiffs contend that defendants' failure to comply with this provision violated 29 U.S.C. § 411(a)(1) by denying them their equal

were sent to shop stewards at the various companies employing Local members (which are known as "barns") to be posted where they could be seen by members. As was the practice for notices of regular monthly meetings, the notice of the November 9, 1980 meeting included the statement that "members must have their receipts on their person and be paid for the month of Oct." [the preceding month].

Members arriving at the November 9, 1980 nominations meeting were informed at the door by defendant George Harris that no member would be allowed inside unless he could produce his "TITAN" computerized dues receipt indicating he had paid his dues through the previous month.[17] This announcement provoked an uproar among those assembled outside the meeting, who claimed that in the past members had been allowed into Local meetings after either presenting a "temporary" dues receipt signed by their shop steward or paying at the door. Shop stewards at the scene offered to receive dues at the door and give members temporary receipts. However, defendants refused to accept anything other than computerized dues receipts. Defendants Griffiths and Harris, as well as witnesses Kenneth Sprague and John Perry, testified that no

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right to nominate candidates. However, because there is no evidence that defendants *discriminatorily* sent notices to some but not all Local members, plaintiffs have not established a Title I violation. *See* part II-A, *supra*.

[17] Local 82 maintained two systems for crediting members' dues payments. A member on "checkoff," *i.e.*, one who authorized his employer to deduct his union dues from his wages and forward them to Local 82, received a "computerized dues receipt" from the International Union's TITAN computer indicating the date and amount of payment and the month through which the member's dues had been paid. A member who is not on "checkoff" typically pays his dues to a shop steward, who gives him a "temporary" dues receipt and forwards the dues to the Local office. The Local then credits the dues payment to the member's account and forwards a computerized dues receipt to the member. *See* n. 22, *infra*.

member had been allowed into previous Local meetings without showing a computerized dues receipt. In light of the uproar caused by the announcement, the absence of any rule requiring that a computerized dues receipt be shown [18] to enter a Local meeting, and the more credible testimony of several witnesses that no such requirement had existed before November 1980, I find that members of Local 82 had not previously been required to show a computerized dues receipt to enter union meetings.

In contrast with the manner in which the dues requirement was applied to the members of Local 82, members of the Local's Executive Board were allowed into the nominations meeting without producing a receipt of any kind. According to defendant Griffiths, this was because he had made an independent examination of their dues records. However, at the same time, plaintiff Jerome Crowley was denied admission to the nominations meeting even though defendant Griffiths had in his possession a computer printout indicating that plaintiff Crowley was fully up to date in his dues payments.

The meeting was conducted amidst loud shouting and arguments among members of the Local. There was conflicting testimony concerning what occurred at critical moments. Based on the evidence before me, I find that the following occurred at the meeting:[19]

Defendant Harris called the meeting to order and turned the meeting over the defendant Griffiths. After

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[18] Article VI, § 3(a) of the Local By-laws states only that

> Every member whose dues are paid up through the month which is prior to the months in which the nominations or election is held shall have the right to nominate, vote for, or otherwise support the candidate of his choice.

[19] In making these findings on disputed factual issues, I am conscious that in some respects they are directly contradicted by the testimony of defendants Griffiths, Harris, and Piemontese, which in these respects I do not credit.

waiving the ordinary business, Griffiths announced that the Local would conduct nominations for the upcoming election. Griffiths announced that a Local By-law, article VI, section 3(b), allowing only members who had attended 50% of the meetings during the previous two years to be candidates for Local office would be "waived" for the 1980 election.[20] Then Griffiths explained the 24 month rule to the members and read lists of "ineligible" and "eligible" candidates. Plaintiffs Anthony Coyne and Robert Lunnin were at the top of the list of persons declared ineligible, which also included plaintiffs James Hayes and Jerome Crowley. Among those listed as eligible to run were the individual defendants Griffiths, Harris, and Piemontese and plaintiff Lynch, as well as Wilfred Pye, William Pye, Paul McGuire, and Joseph Crowley, all of whom held positions in the Local or were supporters of the incumbents.[21] When Griffiths finished reading from the eligibility lists, the members erupted with anger over the limited number of persons eligible to run. Griffiths was asked about the eligibility of the other "700" members in the union, and did not respond. After the tumult subsided, Griffiths opened the nominations for secretary-treasurer, the position he then held. George Harris nominated Griffiths for a second term. The nomination was seconded. Griffiths then asked for additional names, and quickly began to close the nominations as plaintiff Lynch stood up and stated, "Wait a minute. You're going too fast. Am I eligible?" Griffiths briefly refused to recognize Lynch before answering in the affirmative. Then, plaintiff Joseph Cook nominated Lynch for secretary-

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[20] In waiving the 50% meeting attendance requirement, defendant Griffiths relied on *Local 3489, United Steelworkers of America* v. *Usery*, 429 U.S. 305 (1977), in which the Supreme Court held that such a rule violated 29 U.S.C. § 481(3) where it disqualified 96.5% of a local's members.

[21] In all, Griffiths read off the names of 12 persons declared ineligible and 16 persons declared eligible to run for local office. Their names are listed in Plaintiffs' Exhibit 1.

treasurer. Plaintiff Hayes seconded the nomination. Griffiths then closed the nominations for secretary-treasurer and conducted the nominations for the other offices that were to be filled in the upcoming election.

At the conclusion of the nominations, Griffiths announced he would read the list of candidates for Local offices. Griffiths read only his own name for the office of secretary-treasurer and declared himself duly elected. Griffiths read off three candidates for president: defendant Harris, plaintiff Lynch, and John Perry. Once again the meeting erupted when several members attempted to inform Griffiths that Lynch had been nominated for Secretary-Treasurer. Griffiths responded, "I'm running unopposed," and adjourned the meeting.

Based on the foregoing findings, and other evidence introduced at the hearings, I make the additional finding that both before and during the nominations meeting on November 9, 1980, defendants Griffiths and Harris deliberately attempted to deny plaintiffs their rights to nominate candidates, attend membership meetings, and participate in the deliberations of such meetings, and their rights to meet and assemble freely with other members and express their views.

B. Conclusions of Law

In a recent case arising under Title I of the LMRDA, the Court of Appeals recognized that a plaintiff, "on a motion for preliminary injunction, must show that 'in the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits.'" *Maceira* v. *Pagan*, No. 80-1622, slip op. at 10-11 (1st Cir. May 13, 1981) (quoting *Nat. Tank Truck Carriers, Inc.* v. *Burke*, 608 F.2d 819, 823 (1st Cir. 1979) (quoting *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922 (1975)). In addition, plaintiff must establish that the injury plaintiff will suffer if an injunction is not granted outweighs any harm that granting injunctive relief would inflict on the

defendant, and that the public interest will not be adversely affected by the granting of preliminary relief. *Planned Parenthood League of Massachusetts* v. *Bellotti*, 641 F.2d 1006, 1009 (1st Cir. 1981).

1. Likelihood of Success on the Merits

Based on the findings of fact stated above, I conclude that plaintiffs have shown a substantial likelihood of prevailing on their claims that defendants violated 29 U.S.C. § 411(a)(1) by denying plaintiff Jerome Crowley and others their equal right to attend membership meetings and nominate candidates through the imposition of a suddenly announced computerized dues receipt requirement for entry into the nominations meeting and the application of such requirement in a discriminatory fashion. In addition I conclude that plaintiffs are likely to prevail on their claim that the computerized receipt requirement was imposed in retaliation for plaintiffs' expressed intention to nominate candidates to oppose the incumbent Local officers and with the objective of suppressing dissent within the Local, in violation of 29 U.S.C. § 411(a)(2).

I also conclude that plaintiffs have established a substantial likelihood of prevailing on their claim that defendant Gritffiths violated 29 U.S.C. § 411(a)(1) and (2) by refusing to allow plaintiff Lynch to run against him for the office of secretary-treasurer.

Finally, I conclude that there is not a substantial likelihood that plaintiffs will establish that the defendants applied the 24-month rule in a discriminatory fashion in retaliation for plaintiffs' exercise of their free speech rights under 29 U.S.C. § 411(a)(2). Although plaintiffs contend that defendant Griffiths declared supporters of the incumbents eligible despite their late payment of dues, the supporters in question were on check-off during the months in which they made late dues payments. Because 29 U.S.C. § 481(e) requires that union members on check-off not be declared ineligible for office due to delays

resulting from late payment by withholding employers, *see* note 9, *supra*, there is no evidence to support a finding that defendants favored their supporters when applying the 24-month rule.[22]

2. Irreparable Injury

If preliminary relief ordering that a new nominations meeting and election be held is denied, plaintiffs will remain in a Local in which incumbent officers continue to hold office despite their likely violations of Title I. Such an outcome will send an implicit message to Local members that union leaders can unlawfully move to stifle dissent within the Local and yet continue to enjoy the benefits of union office. The resulting "chilling effect" on the exercise of the members' right of free expression constitutes irreparable harm. *Macera* v. *Pagan*, *supra*, slip op. at 11. *See Schonfeld* v. *Penza*, *supra*, 477 F.2d at 903-04; "[F]ederal courts need not necessarily wait to intervene until some sanction is directly imposed on union dissidents, for once suppressed 'the democratic spirit' within a union 'may not soon be revived,'" (quoting *Navarro* v. *Gannon*, 385 F.2d 512, 520 (2d Cir. 1967), *cert. denied*, 390 U.S. 989 (1968).

3. Weighing Harm to Defendants

The court is well aware of the substantial burden imposed on Local 82 by a preliminary injunction ordering a new election, and would be reluctant to order such relief if defendants had not been given the opportunity to present all of their evidence in opposition to plaintiffs' request. However, the court gave defendants such an oppor-

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[22] In the upcoming election, defendants have offered to end one aspect of the allegedly discriminatory application of the 24-month rule. Local 82 has agreed to credit a dues payment made by a member not on check-off as soon as the payment is received by a shop steward, thereby affording members not on check-off a treatment similar to that received by members on check-off. *See* n. 17, *supra*.

tunity, hearing evidence for five days in December 1980 and an additional day in March 1981. Because of the full hearing afforded to the parties, it is less likely that additional evidence would be produced at trial that will alter the findings and conclusions stated herein. Therefore, I conclude that the irreparable harm that plaintiffs will suffer if injunctive relief is denied outweighs the burden imposed on defendants by the preliminary injunction.

4. Public Interest

In *Navarro* v. *Gannon*, the court described Congress' objective in adopting Title I as follows:

> The LMRDA was enacted with the clear purpose of assuring "the full and active participation by the rank and file in the affairs of the union." The Congress by passing a "Bill of Rights" for union members determined that the efficiency of a monolithic union under autocratic rule was gained at too great a price if it necessitated any sacrifice in the members' rights to determine the course of their organization. The balance was struck in favor of union democracy. Only a union responsive to the rights of all its members can achieve the ideals of responsibility, opportunity and self-determination that are recognized as fundamental values in the labor movement.

385 F.2d at 518 (citation omitted) (quoting *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171, 182-83 (1964)).

In examining the request for preliminary relief, the court is well aware that in adopting the Act, Congress did not intend to permit "wholesale judicial intervention" in the affairs of unions. *See Packer* v. *International Brotherhood of Teamsters*, 428 F. Supp. 145, 148 (W.D. Pa. 1977). However, where, as here, the mechanisms of union self-government have been tainted by conduct that undermines the Congressional goal of union democracy, this

court must conclude that granting the preliminary injunction will serve the public interest.

IV.

DUES CLAIM

A. Findings of Fact

On February 27, 1981, the court allowed plaintiffs' motion to amend the complaint to add, *inter alia*, a claim that all dues increases implemented by Local 82 since September 1976 were adopted in violation of 29 U.S.C. § 411(a)(3). *See* note 10, *supra*. Defendants have moved to dismiss the amendments to the complaint.

The relevant facts are not in dispute.[23] Before October 1, 1976, the monthly membership dues rate for members of Local 82 was $9.00. By-laws art. VII, § 5. At a convention in June 1976, the International Union adopted[24] its 1976 International Constitution, which provides for mandatory increases in the monthly dues of members of the International Union, Article X, section 3(d) of the International Constitution states that:

> Dues of members of the International Union, payable through their respective Local Unions, shall not be less than eight dollars ($8.00) per month. . . .
>
> All dues, whether below, at or above the minimum of eight dollars ($8.00) shall be increased by no less than two dollars ($2.00) per month effective October

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[23] The court's statement of the facts is a summary of the undisputed portions of Defendants' Proposed Findings of Fact with Regard to the Issues Raised by the Second Amended Complaint, stipulations made at the March 6, 1981 hearing, and the testimony and exhibits received during the hearings in this action.

[24] Plaintiffs do not contend that the June 1976 convention was unlawfully convened, or that any procedural irregularity invalidates the convention's adoption of the International Constitution.

1, 1976, and an additional one dollar ($1.00) per month effective October 1, 1977. In addition, members whose rate of dues on October 1, 1977 is less than two times their hourly earnings shall have their monthly dues increased up to the equivalent of two times their hourly earnings or by an additional one dollar ($1.00), whichever is a lesser amount. Effective October 1, 1978, and each October 1 thereafter, members whose rate of dues is less than two times their hourly earnings shall have their monthly dues increased up to the equivalent of two times their hourly earnings or by two dollars ($2.00) per month, whichever is a lesser amount.

* * *

After the increases provided above, dues shall be set on October 1 of each subsequent year on the basis of attaining a dues rate equivalent to twice the hourly earnings . . . .

On October 1, 1976, Local 82 increased[25] the monthly dues of its members by two dollars to $11. The two dollar increase is consistent with the formula set forth in Article X, section 3.

On October 1, 1977, Local 82 raised the monthly dues of all members from $11 to $12. Because the average hourly earnings of a member of Local 82 were then $6.45, under the terms of Article X, section 3,[26] the Local's monthly dues were required to be $13.

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[25] It is not clear from the materials before the court whether the October 1976 dues increase, and the subsequent dues increases, resulted from a vote of the Executive Board of Local 82 or from an action by one or more of its officers. However, neither party contends that the dues increases implemented by Local 82 were enacted in compliance with 29 U.S.C. § 411(a)(3)(A). *See* n. 10, *supra*.

[26] Article X, section 3 provides: "When calculating the rate of monthly dues based on two times the hourly earnings, the hourly earnings shall be doubled and rounded to the nearest whole dollar."

On October 1, 1978, Local 82 raised the monthly dues of all [27] its members to $13. Because the average hourly earnings at that time were $6.70, the October 1978 dues rate was consistent with that required by the International Constitution.

On June 1, 1979, Local 82 raised the monthly dues rates for members employed at twelve moving companies by either one or two dollars to $14 or $15, depending upon the member's wage rate. Similarly, on August 1, 1979, Local 82 increased the monthly dues rates for members employed at two other companies by one or two dollars.

On October 1, 1979, Local 82 increased the monthly dues of all remaining members whose wage rates had increased since April 1979 by one or two dollars to $14.00 or $15.00, again depending on their wage rate. Under the terms of Article X, section 3, and the average hourly wage rates in effect in October 1979, all members of Local 82 were required to pay $15.00 per month.

Local 82 increased the monthly dues of additional members employed by companies that had not implemented wage increases before October 1979 on November 1 and December 1, 1979, and on January 1, 1980. By March 1980, all members of Local 82 were paying monthly dues of either $13, $14, or $15, depending on their hourly earnings rates. On April 1, 1980, the monthly dues of all members was set at $15.

Although on October 1, 1980 the average hourly earnings for Local 82's members was $7.92, which under Article X, section 3 would have required a $16 monthly dues rate, the $15 monthly rate established on April 1, 1980 remains in effect.

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[27] Apparently a few employers failed to implement the increase for a number of Local 82 members who were on check-off until the following month.

B. Conclusions of Law

Plaintiffs advance two arguments in support of their claim that the dues increases implemented by Local 82 violate 29 U.S.C. § 411(a)(3). Their first contention is the Article X, section 3 of the International Constitution and 29 U.S.C. § 411(a)(3)(B)(1) do not authorize a local union to increase membership dues without a majority vote of its members. 29 U.S.C. § 411(a)(3)(A). Alternatively, plaintiffs argue that even if the International Constitution and 29 U.S.C. § 411(a)(3)(B)(i) authorize Local 82 to implement annual dues increases without a vote of the membership, the Local's failure to comply with the requirements of Article X, section 3 invalidates the increases instituted from October 1977 through the present. Plaintiffs seek a declaration that all dues increases adopted by Local 82 since September 1976 are invalid, and that any member who is otherwise eligible may hold Local office "if he is in compliance with the 24 month rule once all his dues payments in excess of $9.00 per month are credited prospectively toward subsequent dues payments."

1. Defendants' Motion to Dismiss

Defendants have moved to dismiss the dues claim on four grounds.[28] Their first contention is that because the disposition of plaintiffs' claim that Article X, section 3 of the International Constitution does not authorize a local union to increase membership dues, may adversely affect the interest of the International Union, the court must join the International Union as a party or dismiss the claim.

In relevant part, Rule 19(a) provides that:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdic-

[28] Defendants' fourth ground for dismissal, plaintiffs' failure to exhaust internal union remedies, is discussed at pp. 12-14, *supra*.

> tion over the subject matter of the action shall be joined as a party in the action if . . . (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest . . . . If he has not been joined, the court shall order that he be made a party.

Two courts have held that in an action in which the validity of a provision of a union constitution is challenged, Rule 19 requires the union to be joined as a party. *Krulikowsky* v. *Metropolitan District Council*, 270 F. Supp. 122 (E.D. Pa. 1967); *Kennan* v. *Metropolitan District Council*, 266 F. Supp. 497, 499 (E.D. Pa. 1966) ("The Brotherhood has a definite interest in maintaining the integrity of the laws of its organization, and unless it is brought into court, it would be running the risk of the Court's holding part of those laws invalid without having been a party to the suit."). Because the provision challenged by plaintiffs herein governs dues rules in effect throughout the United States, the International Union's interests may be drastically impaired by a determination that Article X, section 3 violates 29 U.S.C. § 411(a)(3). Therefore, if at the next conference in this case plaintiffs state that they wish to press their challenge to the provision, the court will require plaintiffs to show cause why the court should not order that the International Union be joined as a party defendant. However, because plaintiffs have failed to show a probability of success on the merits of their challenge to Article X, section 3, *see* pp. 29-32, *infra*, the court need not delay the granting of other preliminary relief pending resolution of that issue. But because defendants have failed to show that the International Union cannot be made a party, their motion to dismiss for failure to join an indispensable party will be denied. Fed. R. Civ. P. 19(a).

Second, defendants contend that to the extent that plaintiffs' dues claim challenges actions taken by the In-

ternational Union or Local 82 more than three years before the filing of this litigation, it is bound by Massachusetts' three year statute of limitations for tort actions. Mass. Gen. Laws ch. 260, § 2A.[29] Plaintiffs argue that the applicable statute of limitations is the six year period of contract actions set forth in Mass. Gen. Laws ch. 260, § 2.[30]

Because there is no applicable federal statute of limitations for actions arising under Title I of the LMRDA, the federal courts must look to state law for the appropriate limitations period. *Berard* v. *General Motors Corp.*, 493 F. Supp. 1035 (D. Mass. 1980). In determining which state limitations period to apply, "the federal courts will look to the state statute or remedy 'most analogous' to the particular . . . cause of action." *Burns* v. *Sullivan*, 619 F.2d 99, 105 (1st Cir. 1980) (quoting *Runyan* v. *McCrary*, 427 U.S. 160, 180 (1976)). "The most analogous state law will be applied unless it is 'inconsistent with the federal policy underlying the cause of action under consideration." *Burns* v. *Sullivan*, *supra*, 619 F.2d at 105 (quoting *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1975)).

Under Massachusetts law, a court must look "to the 'gist of the action' or the essential nature of the plaintiff's claim," in determining what statute of limitations to apply. *Hendrickson* v. *Sears*, 365 Mass. 83, 85, 310 N.E.2d 131, 132 (1974).

When characterizing an action under 29 U.S.C. § 411 (a)(3), courts have recognized that although the rights

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[29] "Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action accrues."

[30] "Actions of contract, other than those to recover for personal injuries, founded upon contracts or liabilities, express or implied . . . shall, except as otherwise provided, be commenced only within six years next after the cause of * * *

established by the LMRDA are statutory, not contractual, *Copitas* v. *Retail Clerks International Ass'n*, 618 F.2d 1370, 1372 (9th Cir. 1980), the dominant form of relief sought, restitution of unlawfully collected dues, is quasi-contractual in nature. *Dantagnan* v. *ILA Local 1418*, 496 F.2d 401, 402-03 (5th Cir. 1974). *See Peck* v. *Associated Food Distributors of New England, Local 138*, 237 F. Supp. 113, 115 (D. Mass. 1965). Thus, in *Dantagnan*, the Fifth Circuit held that Louisiana's statute of limitations for actions in quasi-contract applied to an action brought under 29 U.S.C. § 411(a)(3) because appellants sought restitution of unlawfully collected dues, as well as declaratory and injunctive relief, but not "damages for the wrongful act of collection." *Id.* at 403 n.6.

The same result is required under Massachusetts law. "The usual form of action to recover from another money which in equity and good conscience he is not entitled to keep is in contract." *Kagan* v. *Levenson*, 334 Mass. 100, 103, 134 N.E.2d 415 (1956). *See also New Bedford* v. *Lloyd Investment Assoc., Inc.*, 363 Mass. 112, 292 N.E.2d 688 (1973) (holding than an action to recover payments made by mistake was "quasi-contractual," and applying Massachusetts' six year statute of limitations for contracts actions). In the instant case, although plaintiffs seek only a declaration that the dues increases implemented by Local 82 since September 1976 violated 29 U.S.C. § 411(a)(3), the essence of their claim is the contention that defendants unlawfully collected dues payments. Therefore, the six year statute of limitations for actions of contract applies to plaintiffs § 411(a)(3) claim, and defendants' motion to dismiss on statute of limitations grounds will be denied.

Defendants' third contention is that laches bars plaintiffs' dues claim. An action is barred by laches only when there has been unreasonable delay in seeking relief that has resulted in prejudice to the defendant. *Gardner* v. *Panama R. Co.*, 343 U.S. 29, 31 (1951); *Cities Service Oil*

Co. v. *Puerto Rico Lighterage Co.*, 305 F.2d 170 (1st Cir. 1962). Because laches is an affirmative defense, Fed. R. Civ. P. 8(b), and both the length of the delay and the existence of prejudice to the defendant are questions of fact, *Churma* v. *United States Steel Corp.*, 514 F.2d 589, 593 (3d Cir. 1975), ruling on the merits of a claim of laches raised by a motion to dismiss is inappropriate. *See Morgan* v. *Sharon Pennsylvania Board of Education*, 472 F. Supp. 1157, 1160 (W.D. Pa. 1979). Therefore, the motion to dismiss the dues claim on laches grounds will be denied.[31]

2. Probability of Success on the Merits

Plaintiffs assert two legal theories in support for their claim that defendants violated 29 U.S.C. § 411(a)(3). *See* note 10, *supra*. First, citing *Mori* v. *International Brotherhood of Boilermakers*, 482 F. Supp. 838 (N.D. Cal. 1979), plaintiffs contend that 29 U.S.C. § 411(a)(3) prohibits Local 82 from increasing membership dues in accordance with Article X, section 3 of the International Constitution without a majority vote of its members as required by 29 U.S.C. § 411(a)(3)(A). Defendants assert that *Mori* was incorrectly decided, and that 29 U.S.C. § 411(a)(3)(B)(i) authorizes an international union to increase the dues of members of the international union payable through their local unions "by majority vote of the delegates voting at a regular convention . . . ." *Id.*

Mori held that a complaint alleging that at its regular convention an international union had enacted a dues provision requiring "field construction members" to make a supplemental payment to their local in addition to their regular local dues stated a claim for relief under 29 U.S.C. § 411(a)(3). The court declared that 29 U.S.C. § 411(a)(3)

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[31] However, in considering plaintiffs' request for preliminary relief on the dues issue, the court has considered the laches question. *See* pp. 32-33, *infra*.

> states clearly that dues payable to a local labor organization may be increased only according to the methods provided in Section 411(a)(3)(A), and not by the regular convention of an international. Section 411(a)(3)(B) establishes the methods for increasing dues payable to 'a labor organization *other than* a local labor organization . . . .'

482 F. Supp. at 841 (quoting 29 U.S.C. § 411(a)(3)(B) (emphasis in original opinion).

In the instant case, Article X, section 3(d) of the International Constitution purports to set "[*d*]*ues of members of the International Union, payable through their Local Unions* . . . " (emphasis supplied). Thus, here as in *White* v. *Local No. 207, Laborers International Union*, 387 F. Supp. 53 (W.D. La. 1974), an international union has enacted an "across the board" increase in dues to be paid by all its members to their local unions. An international union's authority under 29 U.S.C. § 411(a)(3)(B)(i) to adopt such an across the board increase at its regular convention is well-established. *See id.*, at 56; *Local No. 2, International Brotherhood of Telephone Workers*, 362 F.2d 891 (1st Cir.), *cert. denied*, 385 U.S. 947 (1966); *Ranes* v. *Office Employees, Local 28*, 317 F.2d 915 (7th Cir. 1963). *See also King* v. *Randazzo*, 346 F.2d 307 (2d Cir. 1965); *White* v. *King*, 319 F. Supp. 122 (E.D. La. 1970) (both holding that 29 U.S.C. § 411(a)(3)(B) authorizes an intermediate union to establish the dues rates payable to the intermediate union by its members).

In *Local No. 2, supra*, a local challenged an increase in the minimum local dues that was implemented by the international after a referendum by the membership of its constituent locals. The increase was also later enacted "retroactively" by a vote at the international's convention. After holding that the initial referendum violated 29 U.S.C. § 411(a)(3)(A), the Court of Appeals for the First Circuit upheld the plaintiff's contention that the international convention's action could not retroactively vali-

date an increase that was initially void. However, in so doing the court stated that "[t]here is no doubt that under the statute this convention could validly vote a general dues increase effective prospectively and to this extent we uphold its action." 362 F.2d at 896 (footnote citing 29 U.S.C. § 411(a)(3)(B)(i) omitted).

The rationale for allowing an international union to increase the minimum dues rate payable to its locals was set forth in *Ranes* v. *Office Employees International Union*, *supra*, in which the Court of Appeals for the Seventh Circuit held that by a vote at its regular convention an international may establish the minimum and maximum dues that locals may collect from their members. After examining the legislative history of the LMRDA, which it found was silent on the issue, the court concluded that 29 U.S.C. § 411(a)(3)

> embodies congressional recognition of the existence of a sphere of interest in both international and local unions in the area of membership dues. Traditionally, international unions have exercised primary jurisdiction over affairs of their affiliated local unions, including the control of the local dues structure sufficient to insure the financial health of the union structure. Many international unions exercise control in the latter sphere of interest by the device of prescribing the minimum rate for the dues which each of their locals shall collect from its members. We cannot assume that Congress was unaware of the traditional structure and dues practice of labor unions when it enacted [29 U.S.C. § 411(a)(3)], or that Congress, being aware of the traditional structure and practices, intended by enacting that Section to strip international unions of their traditional power to control the minima and maxima of rates of dues without one word in the Committee Reports expressing that intention. On the contrary, we must as-

sume that Congress was aware of the established structure and practices and interpret the statute in the light thereof.

317 F.2d at 917-18 (footnotes omitted).

Unlike the dues provision at issue in *Mori*, Article X section 3(d) of the International Constitution merely establishes minimum local dues rates[32] without creating "dues differentials" among members of the international union. *Mori, supra*, 482 F.2d at 843.[33] *Cf. Steib* v. *New Orleans Clerks, supra*, 436 F.2d at 1106 (Portion of dues increase voted at district convention that was payable only to local union violates 29 U.S.C. § 411(c)(3)). Therefore, applying the principles articulated in *Local No. 2* and *Ranes*, I conclude that dues increases implemented by Local 82 in accordance with the provisions of Article X, section 3 of the International Constitution do not violate 29 U.S.C. § 411(a)(3).

Plaintiffs' second contention is that even if Article X, section 3 of the International Constitution is a lawful means for increasing union dues under the Act, Local 82 has failed to increase its dues in the manner required by Article X, section 3, and has therefore violated 29 U.S.C.

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[32] Article X, section 3(d) provides that "nothing herein contained shall be construed to prohibit any Local Union from adopting a dues scale higher than the one provided herein, either by continuance of established dues formulas or by Local Union action in accordance with applicable law."

[33] Although for the reasons stated in the text *Mori* is plainly distinguishable from this case, the court there expressly "decline[d] to follow *Ranes* [as well as *Local No. 2* and *White* v. *Local No. 207*] by interpreting [29 U.S.C. § 411(a)(3)] in a manner inconsistent with its plain meaning." 482 F.2d at 842-43. For the reasons articulated in the portion of *Ranes* quoted in the text, and because to do otherwise would render meaningless the language in 29 U.S.C. § 411(a)(3) permitting labor organizations to increase dues "by majority vote of the delegates voting at a regular convention . . ." I follow the analysis set forth in *Ranes* rather than that set forth in *Mori*.

§ 411(a)(3). The undisputed facts indicate that Local 82 failed to conform to Article X, section 3 in two respects. First, the Local increased its dues from $11 to $12 per month in October 1977, not to $13 per month as required by the International Constitution. *See* pp. 23-24, *supra*. Although the Local's failure to raise its dues sufficiently may violate the International Constitution, such a failure does not establish a valid claim under Title I for the relief requested by plaintiffs.

However, it does appear that in June and August 1979, Local 82 increased some members' dues beyond the minimum authorized by the International Constitution until October 1979, and that in November and December 1979, and January and April 1980, defendants increased some members' dues at a time other than that authorized by the International Constitution, in all instances without conducting a secret ballot as required by 29 U.S.C. § 411(a)(3)(A), in violation of 29 U.S.C. § 411(a)(3). Because the court was concerned that members of Local 82 had been guilty of laches for failing to protest the dues increase at the time it occurred, *see* part IV-B, 1, *supra*, the April 24, 1981 proposed order included the following language:

> Any member who claims that he fails to meet the eligibility requirements stated [in the preliminary injunction] only because
>
> (A) between June 1979 and October 1979, he failed to pay increases in his dues implemented in June or August 1979; OR
>
> (B) between November 1979 and October 1980, he failed to pay increases in his dues implemented in November and December 1979 and January and April 1980; must file a claim in writing with the Arbitrators together with supporting evidence, no later than 15 days before the nomination meeting. The Arbitrators shall make findings as to whether the claimant satisfies the criteria set forth in (A) or

(B), and shall compile the claims and findings into a report to be filed with the court not later than 7 days before the nominations meeting, upon which the court shall determine whether a claimant should be permitted to run for office despite his failure to protest sooner the dues increases listed above.

At the conference on April 27, 1981, both plaintiffs and defendants indicated that such language was unnecessary because no individuals met the criteria set forth in (A) or (B). Accordingly, the language was deleted from the preliminary injunction.[34]

V.

EXPLANATION OF THE COURT'S ORDER

A. The Contents of the Order

Throughout the hearings on the form of the preliminary injunction, it has been the court's intention to issue an order that interferes as little as possible with the nomination and election procedures required by the International Constitution and Local By-laws. In large part, the content of the court's order is derived from stipulations and proposals offered by the parties after January 9, 1981, when counsel for defendants first indicated that Local 82 was prepared to conduct a new nomination meeting and election. In their January 15 and 22, 1981 stipulations, *see* p. 3, *supra*, defendants proposed that the nominations and election be conducted under the supervision of Teamsters Joint Council 10. When it became clear that plaintiffs would not agree to several of the terms of defendants' stipulation, in particular to the role of Joint Council 10 in the new election, the court issued its February 12, 1981 Proposed Order Concerning The Conduct of the Election, which explicitly incorporated many of the terms

[34] Defendants have stipulated that no member will be disqualified from being a candidate in the forthcoming election for failing to pay a dues increase in any month in which the rate of dues has been changed so long as he pays the additional amount owed to the Local before the start of the nominations meeting ordered by the court.

of defendants' stipulations and provided for the filing of an undertaking by Joint Council 10 if it consented to supervise the election under the terms and conditions set forth in the court's order. However, at a hearing on February 20, 1981, defendants informed the court that Joint Council 10 was unwilling to file such an undertaking, and requested that all references to defendants' stipulations be deleted from the court's order. At that time, the court requested the parties to determine if they could agree upon a third party to supervise the election. In April 1981, plaintiffs' counsel informed the court that Lawrence Katz, Esquire, in conjunction with the Honest Ballot Association of New England (hereinafter referred to as "the Arbitrators"), would supervise the election. Defendants were given an opportunity to object to the selection of the Arbitrators and have not done so.

Following hearings on plaintiffs' dues claim, the court issued the April 21, 1981 Modified Proposed Order Concerning the Conduct of the Election, which incorporated several of the changes requested by the parties, as well as the court's rulings on plaintiffs' dues claims and defendants' request for bond. *See* part V-C, *infra*. At a conference on April 22, 1981, counsel for the parties and a representative of the Arbitrators made additional suggestions concerning the terms of the proposed order that were incorporated in a stipulation filed with the court on May 5, 1981. The preliminary injunction includes the changes agreed to by the parties.

B. Defendants' Motion for A Stay Pending Appeal

At the conclusion of the April 22, 1981 conference, counsel for defendants moved pursuant to Fed. R. Civ. P. 62(c) for a stay of preliminary injunction pending appeal. In light of the continuing and irreparable harm that plaintiffs are suffering as a result of defendants' Title I violations, *see* part III-B, *supra*, and plaintiffs' substantial likelihood of prevailing both on appeal and at trial, *id.*, I conclude that defendants' motion to suspend injunction

pending appeal should be denied, despite the posibility that defendants will suffer irreparable harm. Under the terms of the preliminary injunction, no person is required to take action for forty days after the entry of the order. Therefore, defendants will have ample time to file their notice of appeal and present a request for stay to the Court of Appeals before any action need be taken pursuant to the court's order.

C. Bond Requirement

Rule 65(c) provides:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sums as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The determination whether to require security, and the amount thereof, rests in the sound discretion of the court. *Scherr* v. *Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972). In addition to considering the possible harm caused to the enjoined party by an unlawful order, the court may consider the likelihood that the applicant will succeed on the merits, *id.*, his ability to post a substantial bond or surety, *Olshock* v. *Village of Skokie*, 401 F. Supp. 1219, 1222 (N.D. Ill. 1975), and the possible adverse impact that requiring substantial security may have on the enforcement of rights created by remedial legislation. *National Resources Defense Council* v. *Morton*, 337 F. Supp. 167 (D.D.C. 1971), *aff'd on other grounds*, 458 F. 2d 827 (D.C. Cir. 1972) (National Environmental Policy Act); *Bass* v. *Richardson*, 338 F. Supp. 478, 491 (S.D.N.Y. 1971) (Social Security Act).

In the instant case, Local 82 seeks a bond sufficient to compensate it for the expense of conducting the nomination meeting and election ordered by the court. According to the papers filed by the arbitrators who will super-

vise the election, their expenses are likely to be approximately $2500. In addition, under the court's order, Local 82 will be required to send notices of the nomination meeting and ballots to each of its approximately 750 members. Thus, the total cost of implementing the court's order may exceed $3000. Plaintiffs do not contend that they are indigent. However, they assert that posting a bond sufficient to cover the costs of the new election would impose a severe financial hardship upon them.

Applying the factors listed above, the court concludes that plaintiffs should not be required to post a bond. When it enacted the LMRDA, Congress sought to ensure "the full and active participation by the rank and file in the affairs of the union." *American Federation of Musicians* v. *Wittstein, supra*, 379 U.S. at 182-83. *See* part III-B, *supra*. Thus, union members were given the right to seek relief in the courts when misconduct by union officials undermines union democracy. *See United Brotherhood of Carpenters of America* v. *Brown*, 343 F.2d 872, 882-83 (10th Cir. 1965). Plaintiffs have shown a strong likelihood of establishing that defendants violated their rights secured by Title I of the LMRDA. *See* part III-B, *supra*. As a result of defendants' probable violations, plaintiffs have been put to the substantial expense of securing preliminary relief, while defendants have used union funds to pay witnesses and counsel for their appearances in this action. *See Hall* v. *Cole, supra*, 412 U.S. at 13. In light of the Congressional policy favoring union democracy, *see Navarro* v. *Gannon, supra* 385 F.2d at 518, and the adverse impact that imposing a substantial bond requirement would have on the vindication of rights afforded by Title I, plaintiffs will not be required to post a bond under Rule 65(c).

Order accordingly.

/s/ Robert E. Keeton
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 81-1545

JEROME CROWLEY, ANTHONY COYNE, JOSEPH FAHEY, ROBERT LUNNIN, JAMES HAYES, GERALD OWENS, JOHN LYNCH, JOSEPH TRASK, JOSEPH MONTAGNA,and DENNIS BATES,

v. *Plaintiffs-Appellees,*

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82; GEORGE HARRIS, PRESIDENT, LOCAL NO. 82; PHILLIP PIEMONTESE, CHAIRMAN OF THE ELECTION COMMITTEE OF LOCAL 82; AND JOHN DOE, JAMES DOE AND JEROME DOE, MEMBERS OF THE ELECTION COMMITTEE OF LOCAL 82,

Defendants-Appellants.

Appeal from the United States District Court
for the District of Massachusetts

[HON. RORERT E. KEETON, *U.S. District Judge*]
(521 F. Supp. 614)

Before
COFFIN, *Chief Judge,*
CAMPBELL and BOWNES, *Circuit Judges*

Gary S. Witlen, with whom *Kathryn Noonan* was on brief, for appellants.

Kurt M. Pressman, with whom *Mark S. Stern*, *Benjamin Hiller*, and *Goldstein, Pressman and Stern* were on brief, for appellees.

Susan M. Webman, Attorney, United States Department of Labor, with whom *T. Timothy Ryan, Jr.*, Solicitor of Labor, *John F. Depenbrock*, Associate Solicitor, and *Joseph M. Woodward*, Attorney, United States Department of Labor, were on brief, for The Secretary of Labor, amicus curiae.

May 21, 1982

BOWNES, *Circuit Judge*. Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers, International Brotherhood of Teamsters (the Local) and certain of its individual officers[1] appeal the order of the district court issuing a preliminary injunction against them that principally requires the Local to conduct new elections for officer positions in the Local. The injunction was sought by several members of the Local, Jerome Crowley, Anthony Coyne, Joseph Fahey, Robert Lunnin, James Hayes, Gerald Owens, John Lynch, Joseph Trask, and Joseph Montagna, who raised a number of claims regarding the Local's conduct of nominations and elections in November and December, 1980. The claims all arose under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 401-531. The primary question posed here is whether the district court had jurisdiction under Title I of the LMRDA, 29 U.S.C. §§ 411-415, to grant the injunction, or whether, as appellants contend, the plaintiffs' only recourse was to the Secretary of Labor under Title IV of the Act, 29 U.S.C. §§ 481-483. The Secretary of

[1] These officers are Bart Griffitha, Secretary-Treasurer; George Harris, President; Phillip Piemontese, Chairman of the Election Committee of the Local; and other unidentified members of the Election Committee.

Labor has intervened on the side of appellants because of his concern over this issue. Additional questions in this appeal concern the propriety of the preliminary injunction under traditional equitable doctrines and the district court's refusal to require plaintiffs to post bond. We have jurisdiction under 28 U.S.C. § 1292(a)(1).

This case concerns only one event, the meeting held by the Local on November 9, 1980, for the nomination of candidates for positions in the Local. The November 9 meeting attracted more interest than was usually shown in the Local's monthly meetings, which was due in part to the efforts of dissident members to gather support to turn the then-current Local officials out of office. Two aspects of the meeting provoked considerable controversy. First, admission to the meeting was restricted to those members who had with them a computerized receipt (the TITAN receipt) showing that their dues had been paid up to date. Several members were denied admission because they did not have TITAN receipts, and they became angry and vocal. At one point, four of the men outside the meeting, plaintiff Lunnin, Kenneth Sprague, and two others, entered the meeting to see Bart Griffiths, the secretary-treasurer of the Local, about easing the rule. Griffiths refused to alter the rule or to allow the shop stewards to check their own dues records and admit paid-up members, but he offered to hold up the meeting for an hour in order to allow members to return home to pick up their receipts. The four-man delegation refused this offer. Lunnin and Sprague, however, had their receipts and were admitted. At the hearing before the district court, both sides presented evidence concerning the regularity with which the TITAN receipt requirement was imposed at Local meetings.

The second controversy occurred when nominations were made. Before nominations began, Griffiths read aloud lists of members ineligible and eligible for candidacy, eleven on the ineligible list and sixteen on the

eligible list. Four of the plaintiffs, Crowley, Coyne, Lunnin, and Hayes, were ineligible; one, John Lynch, was on the eligible list. Eligibility was based on timely payment of dues.[2] The remainder of the approximately 750 members of the Local, including plaintiffs Fahey, Owens, Trask, Montagna, and Bates, were on neither list.[3] At this point, proceedings began to break down—several members often spoke at once—and order was never fully restored. Questions were raised concerning eligibility requirements and the lists, and, at least in the minds of some, Griffiths did not answer them adequately. Nominations were then opened. Griffiths was nominated for secretary-treasurer, and according to the plaintiffs, Lynch was as well. At the close of nominations, however, Griffiths declared himself the sole nominee for secretary-treasurer and included Lynch among the candidates for president. Protests were unavailing. Nominations for other positions went on while similar turmoil prevailed, but plaintiffs' principal objection, and the important fact for this appeal, concerns Lynch's nomination.

Plaintiffs then filed suit in federal district court, alleging ten claims, five of them charging denials of equal rights in violation of 29 U.S.C. § 411(a)(1),[4] three for

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[2] No evidence was introduced specifically on this point, but apparently a TITAN receipt did not reflect whether one's dues payments had been timely.

[3] Testimony about the status of these members was unclear. Evidence most favorable to appellants indicates that these members were probably eligible, but records about the timeliness of their payments had not yet been checked or were not readily available.

[4] 29 U.S.C. § 411(a)(1) provides as follows:

> *(a)(1) Equal rights.*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

denials of free expression of views in violation of 29 U.S.C. § 411(a)(2),[5] one for unlawful discipline in violation of 29 U.S.C. § 411(a)(5),[6] and one for a violation of the right to nominate candidates protected under 29 U.S.C. § 481(e).[7] The complaint, seeking preliminary

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[5] 29 U.S.C. § 411(a)(2) provides as follows:

(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

[6] 29 U.S.C. § 411(a)(5) provides as follows:

(5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

[7] 19 U.S.C. § 481(e) provides in relevant part as follows:

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title [29 U.S.C. § 504] and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof.

relief, was filed on December 1, 1980, after the nomination meeting but before the subsequent by-mail election had been completed.

On December 12, in order to preserve the status quo and to protect its own jurisdiction, the district court issued a temporary restraining order preventing the Local from counting the ballots, some of which had already been received. Several days of hearings on a preliminary injunction, and many more days of negotiations regarding the terms of an order followed. On July 13, 1981, the district court issued a preliminary injunction and memorandum opinion. In its memorandum, the district court concluded that plaintiffs had shown a substantial likelihood of success in demonstrating that the imposition of the TITAN receipt requirement and the refusal to allow Lynch to run for secretary-treasurer both violated their equal right to nominate and their right to express views freely, 29 U.S.C. § 411(a)(1),(2). In the meantime, the Local had dropped the charges against the member that had given rise to the unlawful discipline claim. The injunction that the district court issued set aside the earlier nomination and election and established procedures for a new nomination and election to be overseen by a third party, Lawrence Katz and the Honest Ballot Association of New England. The order also enjoined the defendants from interfering with equal rights of the Local members to participate in meetings of the Local regarding the election and to express their views freely about the election. The plaintiffs were not required to post security under Fed.R.Civ.P. 65(c). Defendants sought a stay of the order in the district court, which it denied, and in this court, which we denied, and this appeal followed.

Appellants challenge the order below on three grounds: the district court lacked remedial jurisdiction under Title I of the LMRDA to order a new election and the

procedures therefor,[8] the preliminary injunction is improper under traditional equitable principles; and the district court improperly refused to require plaintiffs to post a bond. The Secretary of Labor (the Secretary) essentially joins appellants in their first argument and adds that the district court's TRO, issued in part to preserve the district court's jurisdiction, was error. In order to determine the propriety of the preliminary in-injunction (and the absence of posted security), we must decide whether the district court had jurisdiction to order a new election at all. This issue involves reconciliation of Titles I and IV, particularly of their respective jurisdictional provisions, 29 U.S.C. §§ 412(a), 483, which are in apparent conflict.

I. Remedial Jurisdiction

The jurisdictional argument posed by appellants and the Secretary rests on the proposition that the district court erroneously reconciled the conflict between Titles I and IV of the LMRDA. Summary of these Titles explains the conflict. Title IV sets out in some detail a number of requirements union elections must fulfill. 29 U.S.C. § 481. Included are such matters as frequency of elections, rights of candidates involving distribution of campaign material and opportunity to reach union members, reasonable opportunity for union members to nominate and elect candidates, use of union dues, and removal of union officers. *Id.* As to actual nomination and election procedures, Title IV seeks to give members in good standing an opportunity to participate but leaves

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[8] Appellants' main brief suggests that the district court did not have jurisdiction even to hear the Title I claims, although their reply brief disclaims this argument. In any event, discussion of this point is included in the discussion of the district court's remedial jurisdiction.

procedural details largely up to union constitutions and bylaws. *Id.* To enforce his Title IV rights, a union member must first exhaust his internal union remedies and then may request the Secretary to investigate and enforce his rights. 29 U.S.C. § 482(a),(b). The Secretary may sue for a court-ordered new election, 29 U.S.C. § 482(c), but the union member has a very limited right to judicial review of the Secretary's decision not to sue, *Dunlop* v. *Bachowski*, 421 U.S. 560, 572-73 (1975) (review standard is arbitrary and capricious). Title IV further provides that

> [e]xisting rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

29 U.S.C. § 483. It is on the apparent exclusivity of the Title IV remedy that appellants and the Secretary rely.

Title I is the so-called "bill of rights" for union members and provides broader rights than Title IV, including equal rights to participate in the nominating and electoral process, the rights to express views freely and to assemble with other union members, a referendum requirement for dues increases, prohibition of union-imposed limitations on a member's right to sue, and protection against improper disciplinary action. 29 U.S.C. § 411(a). Enforcement of these rights is as follows:

> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

29 U.S.C. § 412.[9] In the instant case, plaintiffs sued under this provision, and the district court took jurisdiction thereunder.[10] The question is whether Title IV, particularly § 483, preempts Title I—at least to the extent that the district court may not order a new election—where ballots for a union election have been sent out, some have been returned, and none have been counted. Section 483 provides that the process established in Title IV "for challenging and election already conducted shall be exclusive."

Although it would appear that the answer to this question lies in deciding only whether the election here has already been conducted, the Supreme Court has advised against a literal reading of legislation.

> We have cautioned against a literal reading of congressional labor legislation; such legislation is often the product of conflict and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in light of the general objectives Congress sought to achieve. See, *e.g.*, *National Woodwork Mfrs. Assn.* v. *NLRB*, 386 U.S. 612, 619. The LMRDA is no exception.

Wirtz v. *Local 153, Glass Bottle Blowers Ass'n, AFL-CIO*, 389 U.S. 463, 468 (1968) (footnote omitted).

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[9] The Title I enforcement procedure also requires that union members exhaust internal union remedies over a four-month period before bringing suit, 29 U.S.C. § 411(a)(4). Appellants and the Secretary do not challenge the district court's finding that plaintiffs' filing of a complaint with Teamsters Joint Council 10, Local 82's supervisory body, and the Council's denial of the complaint constituted sufficient exhaustion.

[10] The district court found, however, that it lacked jurisdiction over plaintiffs' Title IV right-to-nominate claim and over a claim alleging that substantially the same facts violated Title I.

The precise scope of Title IV's exclusivity in relation to Title I is obscured by the earlier reference in § 483 to "existing rights and remedies." It can be argued that § 483 does not impinge upon Title I at all because Title I is not an existing right or remedy within the meaning of § 483. This argument, which we do not adopt but merely posit, can be derived from a reading of the legislative history: Congress contemplated only that state law rights and remedies would be preempted by Title IV when it was considering the enactment of § 483. *See infra* at 18-19. We therefore deem it appropriate to analyze the tension between Titles I and IV before deciding whether the election in this case was "already conducted" for purposes of § 483. It is also necessary to determine whether plaintiffs alleged genuine Title I or Title IV claims. We address first the relationship between Titles I and IV, and before turning to the legislative history, we look to the case law for guidance.

Appellants rely heavily on *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), in contending that the district court lacked jurisdiction to order a new election, and indeed that case is widely considered the starting point for examining the tension between Titles I and IV. *Calhoon* involved a pre-election attack on certain provisions of a union's bylaws and national constitution that prevented a union member from nominating anyone but himself for union office and that restricted nominating rights to union members of five or more years standing who had served a specified amount of sea time in recent years. Plaintiffs in *Calhoon* claimed that these rules deprived them of their equal right to nominate candidates under 29 U.S.C. § 411(a)(1). District court jurisdiction was therefore argued to be available under 29 U.S.C. § 412. The Supreme Court rejected this argument, stating that a court did not have jurisdiction under § 412 where any of the claims charged in substance a breach of Title IV rather than Title I rights. *Calhoon* v. *Harvey*, 379 U.S. at 138. Title IV, the Court said, set the standards for eligibility and qualifica-

tions of candidates and officials. *Id.* Section 411(a)(1) of Title I, on the other hand, only provided that union members not be discriminated against in their right to nominate and vote, and even this protection was subject to reasonable rules and regulations of the union. *Id.* at 139. The *Calhoon* plaintiffs challenged eligibility rules themselves, not any discriminatory application of them, and so actually alleged Title IV claims. *Id.* The limitation on their ability to pursue essentially Title IV claims was so, the Court went on, because Congress intended the more technically competent Secretary of Labor to handle union election issues and sought to allow unions great latitude in resolving their own disputes. *Id.* at 140. Justice Stewart concurred, observing that he would allow a district court to take jurisdiction of Title IV claims where it was asserted that union rules "effectively distorted the basic democratic process." *Id.* at 147 (Stewart, J., concurring).

In subsequent LMRDA decisions, the Supreme Court discussed at greater length the nature of Title IV. In *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n, AFL-CIO*, 389 U.S. 463, the Court observed that Title IV's "special function . . . is to insure 'free and democratic' elections," *id.* at 470 (footnote omitted). The content of Title IV, the Court continued, reflected the resolution of a vigorous debate in Congress over the competing policies of correcting abuses in union elections and avoiding "unnecessary governmental intrusion into internal union affairs." *Id.* at 470-71. Thus, under Title IV, unions enjoyed great latitude to settle internal disputes, but when they could not do so, the most skilled government agency, the Labor Department, would step in. *Id.* at 471 (citing *Calhoon* v. *Harvey*, 379 U.S. at 140). This enforcement scheme, the Court observed elsewhere, is intended to conform to "the longstanding congressional policy against unnecessary governmental interference with internal union affairs." *Hodgson* v. *Local 6799, United Steelworkers*, 403 U.S.

333, 338 (1971). In *Trbovich* v. *UMW*, 404 U.S. 528 (1972), a decision that permitted a union member to intervene in a Title IV action brought by the Secretary, the Court noted that § 483 provided "the 'exclusive' post-election remedy for a violation of Title IV," *id.* at 531. The reasons for Title IV's exclusivity in these cases were "(1) to protect unions from frivolous litigation and unnecessary judicial interference with their elections, and (2) to centralize in a single proceeding such litigation as might be warranted with respect to a single election." *Id.* at 532. Further reference to the exclusivity of Title IV in a post-election case came in a decision allowing a union member to seek judicial review of the Secretary's decision not to sue after receiving a Title IV complaint, *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). The Court stated that

> [c]ertain LMRDA provisions concerning pre-election conduct, 29 U.S.C. §§ 411-413 and 481(c), are enforceable in suits brought by individual union members. Provisions concerning the conduct of the election itself, however, may be enforced only according to the post-election procedures specified in 29 U.S.C. § 482. Section 483 is thus not a prohibition against judicial review but simply underscores the exclusivity of the § 482 procedures in post-election cases.

Id. at 566-67. The effect of these discussions, none of which are part of the *ratio decidendi* of the cases, is not entirely clear. The impact of Title IV's exclusive remedy on a Title I claim arising in an election is nowhere discussed. Moreover, while the Court speaks of Title IV's exclusivity, *Trbovich* and *Bachowski* "plainly evince greater solicitude for aggrieved union members, and invite greater harassment of offending unions; in so doing, they undercut *Calhoon*'s policy of non-interference." *Buna* v. *Moving Picture Machine Operators Local 224*, 567 F.2d 1117, 1124 (D.C. Cir. 1977) (Wilkey, J.) (footnote omitted).

Courts of appeals have in a few cases addressed the question of a Title I violation occurring during a union election, primarily in cases involving a denial of equal rights. Jurisdiction of a Title I claim in a union election has been upheld on the theory that prompt, effective relief for violations of Title I rights—particularly for discrimination during an election—requires that a court be allowed to take jurisdiction without forcing an aggrieved union member's claim to undergo review by the Secretary. *Kupau* v. *Yamamoto*, 622 F.2d 449, 455 (9th Cir. 1980). In addition, the exclusivity clause of § 483 does not clearly preclude jurisdiction of Title I claims, and when the Supreme Court speaks of the exclusivity of the Title IV remedy, it is careful to speak of its exclusivity only as to Title IV rights. *Id.* (citing *Calhoon* v. *Harvey*, 379 U.S. at 140). Elsewhere, the question has been phrased only in terms of a cause of action:

> [T]he crucial question for the court is whether or not a union member has been discriminated against in one of the rights enumerated in [§ 411(a)(1)]. If such discrimination is present, a cause of action exists under [§ 411(a)(1)] regardless of other claims; absent such discrimination, the courts have no such jurisdiction.

Depew v. *Edmiston*, 386 F.2d 710, 712 (3d Cir. 1967) (footnote omitted). Similar reasoning appeared in *McNail* v. *Amalgamated Meat Cutters, AFL-CIO*, 549 F.2d 538, 540 (8th Cir. 1977). With respect to free speech rights, "[w]hen rights of free speech and of association—as opposed to the rights of voting and election—of union members are invaded by the actions of union officers, the requirement of initial appeal to the Secretary under Title IV is inapplicable," *Schonfeld* v. *Penza*, 477 F.2d 899, 903 (2d Cir. 1973), and jurisdiction under Title I is available.

Our review of the legislative history persuades us that these decisions correctly refused to find Title I election

claims and remedies preempted by Title IV. What was to become the LMRDA was reported out of the Senate Committee on Labor and Public Welfare as S. 1555. This Senate bill contained no provisions comparable to the current Title I provisions, but it did have provisions regarding union elections that were substantially similar to those now contained in Title IV. In particular, the rules regarding elections were to be enforced by the Secretary of Labor on complaint from union members. S. 1555, § 302; S. Rep. No. 187, 86th Cong., 1st Sess., *reprinted in* [1959] U.S. Code Cong. & Ad. News, 2318, 2337-38, 2364-65.[11] Union members retained existing rights and remedies to enforce union election rules before an election was conducted, but complaint to the Secretary was the only avenue open for challenging an election already held. S. 1555, § 303; S. Rep. No. 187 at 2338, 2365. The existing rights and remedies at this time all derived from state law and union constitutions and bylaws. The result of these provisions was that all pre-election relief was at state law, and post-election relief was exclusively a matter of federal law. S. Rep. No. 187, Minority Views, Appendix B, at 2408.

Dissenting members of the Senate Committee and others objected to the lack of a "bill of rights" for union members as against the union in S. 1555, S. Rep. No. 187, Minority Views at 2374-75 (Senators Goldwater and Dirksen), and appropriate amendments were offered to the Senate bill by Senators McClellan and Kuchel, 105 Cong. Rec. 6475-76 (1959) (McClellan amendment); *id.* at 6693-94 (Kuchel amendment). The McClellan amendment, introduced first, established several rights for union members, including equal rights and free speech, and empowered the Secretary to seek injunctions and other relief to enforce those rights. The principal objection to this amendment came from many of the proponents of S. 1555,

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[11] Hereinafter cited as S. Rep. No. 187 with page citations to [1959] U.S. Code Cong. & Ad. News.

who were concerned that these statutory rights would preempt state and federal rights union members already enjoyed, *see* 105 Cong. Rec. 6481-87 (1959) (remarks of Sen. Kennedy),[12] and would operate to hamstring legitimate union activities, *see* 105 Cong. Rec. 6721 (1959) (remarks of Sen. Church). Some opposition was also voiced to the provision for enforcement by the Secretary on the grounds that the availability of injunctive relief would deny defendants a trial by jury in suits brought by the government and that it would set an undesirable precedent for federal enforcement of racial integration and civil rights.

The McClellan amendment was passed by a one-vote margin, but three days later it was replaced by the Kuchel amendment, which contained a bill of rights responsive to the concerns aired about the McClellan amendment. The Kuchel amendment redefined and narrowed union members' rights slightly in order to give unions more leeway to conduct their affairs reasonably. The Kuchel amendment also included a clause declaring that the "bill of rights" did not limit any other rights and remedies union members possessed. 105 Cong. Rec. 6694 (1959) (§ 103). The McClellan amendment had been similarly modified earlier. 105 Cong. Rec. 6487 (1959). One of the major

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[12] Senator Kennedy was one of the sponsors of S. 1555 and its floor manager in the Senate. Among his remarks were the following:

> I think the amendment raises the question of preemption. In other words, if the proposal were enacted, the present rather exhaustive remedies provided under the common law of the various States might be wiped out, and only the rights suggested by [Senator McClellan] would then be available to union members.

105 Cong. Rec. 6482 (1959).

> [I]n order to prevent [the McClellan] amendment from preempting the field, certainly additional language would be required either in the bill or in the amendment of [Senator McClellan].

Id.

changes effected by the Kuchel amendment was to provide for enforcement by individual union members, not by the Secretary, as follows:

> Sec. 102. Any person whose rights secured by the provisions of this title have been infringed may bring an action in a district court of the United States for such relief as may be appropriate.

105 Cong. Rec. 6694 (1959). According to Senator Kuchel, this change was in the "interest of justice." 105 Cong. Rec. 6720 (1959). Senator Kefauver's explanation of his preference for the Kuchel amendment over the McClellan amendment is perhaps more illuminating:

> I wish to congratulate the sponsors of the [Kuchel] amendment on the amendment they have presented, leaving out section 103 [of the McClellan amendment], which, as has been stated, would put the Secretary of Labor in the middle of the actions of every labor union in the United States and give him the right to institute suits at his will. It would be very difficult to carry on management-labor relations in the public interest if an unthoughtful Secretary of Labor wished to interfere. This section, plus the absence of a requirement for jury trials, were the principal reasons I voted against the McClellan amendment.

105 Cong. Rec. 6726 (1959).

After passage, S. 1555 went to the House, where the Committee on Education and Labor reported out a modified version of the bill. In addition, two other bills, the Landrum-Griffin bill and the Shelley bill, were presented to the House. All three bills contained roughly similar "bill of rights" and election procedure provisions.[13] As to elections, all three bills allowed aggrieved union members themselves to bring suit in federal district court (after

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[13] The principal differences between the bills concerned matters not at issue here, such as secondary boycotts and hot cargo practices.

exhausting internal remedies for a certain period) for appropriate relief for violations of election (Title IV) rights, including a new election supervised by the Secretary of Labor. H.R. 8342, § 402; H. Rep. No. 741, 86th Cong., 1st Sess., *reprinted in* [1959] U.S. Code Cong. & Ad. News 2439, 2465-66;[14] 105 Cong. Rec. 15707 (1959) (Landrum-Griffin bill); *id.* at 15716 (Shelley bill). This process was, in all three bills, the exclusive means by which union members could attack improperly held elections, but members retained rights at state law to challenge pre-election violations. H.R. 8342, § 403; H. Rep. No. 741 at 2439-40, 2466; 105 Cong. Rec. 15707 (1959) (Landrum-Griffin bill); *id.* at 15716 (Shelley bill). Indeed, the language of exclusiveness in all three bills was identical to that contained in S. 1555 and now in 29 U.S.C. § 483. The apparent purpose of the exclusivity clause was the same as in the Senate: to preempt state remedies after a union election had occurred but otherwise to save them. *See* 105 Cong. Rec. 15689 (1959) (remarks of Cong. Brademas) (one of major provisions of committee bill is to preserve "members' rights to enforce [a] union's constitution under State laws with respect to trusteeships and safeguarding fair procedures before an election."). With respect to enforcement procedures, the only explanation for the House's preference for enforcement of election rights by individual members rather than by the Secretary was given by Congressman Teller.

> [A] sharp departure of our committee bill from S. 1555 has to do with the extent to which the obligations of the proposed law are given over to the Secretary of Labor for enforcement. S. 1555 goes overboard on this; the Secretary of Labor is given enormous powers of rulemaking and enforcement. Estimates of the annual cost of administering S. 1555 have varied from $25 million to anywhere up to $100

[14] Hereinafter cited as H. Rep. No. 741 with page citations to [1959] U.S. Code Cong. & Ad. News.

> million. Our committee bill H.R. 8324 substitutes the courts for the Secretary in most instances, and provides remedies which aggrieved individuals may enforce without the Secretary's permission. This will save the taxpayer millions of dollars annually, and accords with our traditions without reducing the effectiveness of the enforcement procedure.

105 Cong. Rec. 15681-82 (1959) (remarks of Cong. Teller). Violations of "bill of rights" protections were to be similarly remedied under all three bills: after exhausting internal union remedies over a certain period, aggrieved members could bring suit in federal district court for appropriate relief. H.R. 8342, § 402 (committee bill); 105 Cong. Rec. 15704 (1959) (Landrum-Griffin bill); 105 Cong. Rec. 15713 (1959) (Shelley bill).

The House passed the Landrum-Griffin bill, and it, together with the Senate bill, went to conference. With respect to the "bill of rights," the conference committee retained the House provisions, including enforcement by individual union members. Conf. Rep. No. 1147, *reprinted in* [1959] U.S. Code Cong. & Ad. News 2503, 2503-04. The committee followed, however, the Senate provisions covering complaints of violations of election rules; only the Secretary was authorized to sue to set aside an improperly held election. Conf. Rep. No. 1147, *reprinted in* [1959] U.S. Code Cong. & Ad. News 2503, 2507. As both Senate and House bills had suggested, this remedy for an improperly held election, once conducted, was exclusive. S. 1555, § 403; H.R. 8342, § 403 (as amended by Landrum-Griffin bill).

This history suggests that Congress intended the Secretary to have considerable responsibility for examining union elections, but it does not suggest that Congress sought to oust the federal courts of jurisdiction over complaints involving union elections. The exclusiveness of the Title IV remedy in certain cases was intended to exist only vis-a-vis state remedies; there is no evidence that limita-

tions on Title I by Title IV were ever contemplated. Moreover, while Congress recognized that authorization of the Secretary to enforce Title IV would serve the functions of screening out nonmeritorious claims and avoiding a plethora of suits challenging the same election, *see Trbovich* v. *UMW*, 404 U.S. at 532—policies that appellants and the Secretary emphasize in the instant appeal—this same reasoning might have been applied to Title I but was not. Indeed, Senators opposing authorization of the Secretary to enforce Title I suggested that it would create undue interference in labor-management relations, which would thwart achievement of broader goals of improving such relations. The apparent feeling in the House was that enforcement by the Secretary would be too expensive, as well as too intrusive.

We conclude that the different purposes that Congress sought to have Titles I and IV serve do not require, absent a specific statutory provision, that a federal district court be foreclosed from taking jurisdiction of a Title I claim in an election case such as this one, where ballots have been sent out, some have been received, and none have been counted. This result respects the special competencies of both the courts and the Secretary. The rights protected by Title I, particularly equal rights to participate in union elections, free speech, and due process, 29 U.S.C. § 411(a)(1), (2), (5), are in the nature of rights traditionally protected by federal courts. Title I rights are not rights as to which the Secretary has particular expertise, so it is unnecessary for him to perform a screening function. Furthermore, these rights are individual—as opposed to the "group" right of members to an election conducted in accordance with the union constitution and bylaws and 29 U.S.C. § 481(e)—so enforcement of such rights by individual members in the courts will not substantially undermine the consolidation function performed by the Secretary in a Title IV case. That is, suits involving Title I rights will produce individual fact patterns, and, even if several suits are brought, conflicting or redundant rulings

are not likely to emerge, and unions will not be burdened unfairly by litigation.

While we conclude that pursuit of Title IV's goals do not preempt Title I in the instant case, two questions remain. First, were the plaintiffs' claims genuine Title I claims or only Title IV claims to which the Title I label was affixed? Second, was the election in this case "already conducted" for purposes of § 483 with the result that it was outside the district court's jurisdiction even though other Title I election cases would not be?

The first question is important because by fashioning rules to distinguish Title I and Title IV causes of action, federal courts have developed a pragmatic method for, in many instances, reconciling the two titles and allowing them to operate in their separate spheres. Concern with the sufficiency of a Title I claim began in *Calhoon* v. *Harvey*, 379 U.S. 134, where the mere labelling of claims as Title I claims was held insufficient, *id.* at 138. With respect to a violation of equal rights under Title I, 29 U.S.C. § 411(a)(1), the touchstone of a valid Title I cause of action is discriminatory application of eligibility rules, *id.* at 139; *Kupau* v. *Yamamoto*, 622 F.2d at 453-54; *McNail* v. *Amalgamated Meat Cutters, AFL-CIO*, 549 F.2d at 540; *Depew* v. *Edmiston*, 386 F.2d at 714. In this case, appellees alleged several violations of equal rights protected by Title I, but the district court found that only two violations were likely to have been committed: the exclusion of members from the nomination meeting for failure to show TITAN receipts and the refusal to include Lynch as a candidate for secretary-treasurer. The facts alleged in the complaint show that appellees objected to applications of union rules against particular members; appellees did not object to the rules themselves. We accordingly hold that the allegations of these probable violations presented sufficient equal-rights causes of action, and we defer consideration of the evidentiary basis of the district court's findings until we review the preliminary injunction.

A similar cause-of-action analysis is applied to complaints charging violations of free speech rights protected by Title I, 29 U.S.C. § 411(a)(2). The distinction between attacks on rules themselves and attacks on discriminatory application of them that is used to analyze purported § 411(a)(1) claims does not, however, have a convenient parallel in a distinction between challenges to eligibility rules and challenges to applications of those rules that impede free speech. The rule that has been developed as to § 411(a)(2) claims is that where an election or election rules are involved, a court will have jurisdiction only "where union action abridging both Title I and Title IV can be fairly said, as a result of established union history or articulated policy, to be part of a purposeful and deliberate attempt by union officials to suppress dissent within the union." *Schonfeld* v. *Penza*, 477 F.2d 899, 904 (2d Cir. 1973). *Accord*, *Driscoll* v. *Operating Engineers, Local 139*, 484 F.2d 682, 686-88 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). This rule represents an attempt to reconcile the Title IV policy that the Secretary first investigate election disputes with the Title I policy that federal courts protect the democratic spirit in union elections and elsewhere. *Schonfeld* v. *Penza*, 477 F.2d at 903-04.

Examining the allegations that underlie the free speech violations found by the district court, we conclude that plaintiffs sufficiently alleged that the application of the TITAN receipt requirement and the failure to include Lynch on the proper candidate list represented deliberate and purposeful attempts to suppress dissent. It was and is still up to plaintiffs, of course, to prove their allegations, as a matter we discuss below.

The second question, whether the election was "already conducted," is raised in the Secretary's brief in the challenge to the district court's TRO, which was issued to prevent the counting of ballots and thus to prevent the election from becoming "already conducted." According to the Secretary, it was already too late; the district court

had already lost its jurisdiction. An election cannot be said to begin until ballots are distributed, nor can it be completed until the results are announced, but § 483 does not make clear how the period between ballot distribution and announcement of results should be classified. The instant case involves this uncertain period: ballots for the by-mail election had been sent out, some had been returned, and none had been counted.

The Secretary argues that the balloting process is part of the conduct of an election and that therefore other rights and remedies are available only before ballots are sent out. The Secretary points out that this result conforms to other provisions of Title IV, which empower the Secretary to supervise elections, and that it avoids a "race to the courthouse" that would occur if losing candidates could seek judicial relief after they learn of the results but before the results are officially announced. (Appellants address this point in a footnote, contending simply that the election in the instant case was "already conducted.") Appellees argue that an election is not "already conducted" until ballots are counted, or at least that an election is not "already conducted" when, in a case such as this one, ballots have been sent out, some have been returned, and none have been counted.[15]

The legislative history on this point is unclear. S. 1555, which did not contain an exclusivity clause in its equivalent to Title IV, nevertheless apparently contemplated such a provision, but the explanation of the exclusiveness of the remedy at the time the Senate debated S. 1555 did not fix precisely the point when the federal remedy became exclusive. Senator Kennedy offered the explanation that

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[15] Resolution of these arguments involves a secondary question: in deciding whether an election has occurred, should the court look at the time of the alleged violation or at the point in the electoral process where a remedy would be ordered? For purposes of this discussion only we will adopt the Secretary's position on this matter, that the time of the remedy is crucial.

"[p]rior to the day of an election an individual can sue a State. The day after an election the Secretary of Labor assumes jurisdiction." 105 Cong. Rec. 6485 (1959). What is meant to happen the day of an election, essentially the problem here, is unsaid. *See also* S. Rep. No. 187 at 2338; H. Rep. No. 741 at 2440. Moreover, at the time Senator Kennedy spoke, the bill did not contain a "bill of rights," and one cannot tell what effect, if any, the "bill of rights" would have been thought to have on this aspect of the future Title IV. The legislative history bearing generally on Titles I and IV, discussed above, supplies some greater assistance. Both houses of Congress displayed extensive support for individual rights protections that were written into Title I. Enforcement of these rights by the Secretary was rejected, some concern being voiced about the intrusiveness of that manner of enforcement. "Already conducted" should not be interpreted, therefore, so as to render Title I subordinate to Title IV.

The cases are not in accord, but the most extended treatment of the issue by one court appears in three opinions by the Third Circuit Court of Appeals. In one, the case to which the Secretary and appellants direct us principally, the court laid down the rule that "an election has been conducted once balloting has occurred." *McDonough* v. *Local 825, Int'l Union of Operating Engineers*, 470 F.2d at 264. In that case, ballots had been returned and counted, the results were known, and the only thing left to be done was to certify the results. *Id. McDonough* thus does not provide a very reliable interpretation of "already conducted," a point borne out by its failure to discuss the earlier opinion in *Depew* v. *Edmiston*, 386 F.2d at 712, which allowed a Title I challenge to an election in which ballots had already been sent out. *Depew*, however, did not address the relationship of the mailing to § 483. The ambiguity of these rulings appears to have been resolved in the third case, *Amalgamated Clothing Workers Rank & File Comm.* v. *Amalgamated Clothing Workers, Philadelphia, Joint Board*, 473 F.2d 1303 (3d

Cir. 1973), which stated that "*once the election has been completed*, the outcome cannot be affected by [a] Title I suit." *Id.* at 1306 (emphasis added). It cited *McDonough* in support of this proposition.[16] Other courts have also concluded that an election is not "already conducted" until it is completed, that is, until the ballots are counted and the results are known. *See Beckman* v. *Local No. 46, Int'l Ass'n of Bridge Workers*, 314 F.2d 848, 850 (7th Cir. 1963) (approving district court's ruling that Title I would be defeated if plaintiff in ballot-tampering case had to wait until ballots were counted and then pursue remedy under Title IV; no specific discussion of § 483); *Kolmonen* v. *International Hod Carriers Union*, 215 F. Supp. 703, 709 (W.D. Mich. 1963) (Title I remedy available if challenge occurs "before a completed election"); *cf. Kupau* v. *Yamamoto*, 622 F.2d at 455-57 (Title I remedy available even after completed election if Title I claim does not ripen until that time).

Contrary statements, apart from the apparently superseded *McDonough* opinion, come from the district courts.[17]

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[16] The position of the Second Circuit is difficult to assess. Initially, it suggested a similar rule—plaintiff complaining about election practices "subsequent to the nomination and voting" must look to Title IV for relief, *Libutti* v. *DiBrizzi*, 337 F.2d 216, 218 (2d Cir. 1964)—but its vitality may be suspect, *see Libutti* v. *Dibrizzi*, 343 F.2d 460, 461 (2d Cir. 1965), *aff'g on rehearing Libutti* v. *DiBrizzi*, 337 F.2d 216 (*Calhoon* "casts considerable doubt" on interpretation of Title I in earlier opinion). The district courts have moved further away from this rule. *See New Action Coalition* v. *Local 2, United Federation of Teachers*, 510 F. Supp. 1208, 1211-12 (S.D.N.Y. 1981) (election "already conducted" once ballots mailed out); *Laski* v. *International Organization of Masters*, 502 F. Supp. 134, 135-36 (S.D.N.Y. 1980) (same).

[17] Courts of appeals have dismissed Title I claims because elections have already occurred, but in these cases the results of the election have been known, and the election has been over. *Davis* v. *Turner*, 395 F.2d 671, 672 (9th Cir. 1969); *cf. Kemptherne* v. *United Transp. Union*, 457 F.2d 551, 553 (7th Cir. 1972) (per curiam) (completed election mooted claim).

In *Laski* v. *International Organization of Masters*, 502 F. Supp. 134, 135-36 (S.D.N.Y. 1980), the district court held that the mailing of ballots rendered the election "already conducted." The court relied on *McDonough* and the policy behind Title IV that federal courts not disrupt union elections. *Id.* (The district court also ruled alternatively that no Title I claim had been stated). The same rule was announced by a different judge of the same court, this time in reliance entirely on *McDonough*. *New Action Coalition* v. *Local 2, United Federation of Teachers*, 510 F. Supp. 1208, 1211-12 (S.D.N.Y. 1981); *see also Lawrence* v. *Utility Workers Local 126*, 509 F. Supp. 1151, 1158 (N.D. Ohio 1981 (dictum) (quoting *McDonough*).

The phrase "already conducted" is, as the foregoing shows, not free from ambiguity, but it seems to make most sense as "previously carried out." Considering the stages of an election—the last being the tabulation of votes—it is hard to conceive of an election as "already conducted" before the final stage has been completed; union members—the class of potential Title I plaintiffs—would not think that an election was "already conducted" when they had received their ballots but not yet voted.

In addition to the language of § 483, the policies behind Titles I and IV favor a construction of "already conducted" that an election has not reached that point until the ballots have been counted. First, the need for effective relief requires that Title I remedies be available for violations that occur during the election process. Relief for violations under Title IV is possible only if the wrong "may have affected the outcome of an election," 29 U.S.C. § 482(c)(2); *see* 29 C.F.R. § 452.5. This test is mathematical: the Secretary of Labor will litigate under Title IV only if the number of affected ballots would have changed the outcome of the election. Comment, Union Elections and the LMRDA: Thirteen Years of Use and Abuse, 81 Yale L.J. 407, 498-99 (1972). The result is obvious: flagrant violations may go unremedied if the number of

affected ballots is too small. For example, foreclosure of Title I claims once balloting begins would prevent effective relief for violations that occur during the election, such as denial of access to the polling place or failure to provide a minority with ballots, Note, Election Remedies Under the Labor-Management Reporting and Disclosure Act, 78 Harv. L. Rev. 1617, 1628 (1965). Moreover, some violations are not susceptible to this mathematical test, and there appears to be little guidance for the Secretary in determining whether to sue in these instances. Comment, *supra*, 81 Yale L.J. at 499.

Second, evaluation of the impact Title I may have on Title IV's policy of noninterference in union elections suggests that "already conducted" means that the ballots have been counted. Preresult judicial relief need not require a new election in all cases: the remedy necessary for discrimination against a few voters may be simply the opportunity for those voters to vote anew. Such a remedy is more flexible and potentially less disruptive than a new election, the only remedy that is possible under Title IV. Preresult judicial relief possesses other advantages over Title IV, all of which minimize the harmful effect government intervention may have on union affairs. Resolution of a dispute before the results of the election are known will prevent the dispute from casting doubt on the election. It will also prevent illegitimate victors from consolidating their positions and will help provide a fair and honest election in the first instance. Note, *supra*, 78 Harv. L. Rev. at 1623-24. Preresult Title I suits admittedly can be used to harass unions and to delay elections,[18] *see id.* at 1624, but the capacity of these suits to vindicate individual rights far outweighs these disadvantages, which

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[18] One other argument against these suits, that an aggrieved party may win thereby mooting his claim, is not applicable in a case such as this, where one plaintiff is denied the right to be listed in the correct group of candidates.

may be protected against by the court in the same way that it handles other frivolous claims.

Finally, "already conducted" should mean "already completed" because one of the strongest reasons against Title I suits by individual union members does not come into being until the ballots have been counted. This reason is that union members should not be allowed to sandbag elections, that is, they should not wait to see whether they won or lost an arguably improperly held election before bringing suit. This is the "race to the courthouse" about which the Secretary is concerned. Up until the time ballots are opened and counted, there can be no sandbagging.

We rule, therefore, that an election is not "already conducted" until all the ballots are counted and find that the election in this case was not "already conducted." [19] We are cognizant of the Secretary's arguments that foreclosure of Title I suits at an earlier point will better enable the Secretary to centralize and screen suits, will exploit the Secretary's expertise, and will further union self-government. We believe that these arguments have largely been answered above, but we emphasize two points in addition. First, these policies are to be considered in view of the entire scope of Title IV, which reaches several areas not addressed in Title I, and these policies are consequently not much affected whether Title I suits are allowed before or after ballots are mailed. Second, whatever the effects may be, we are persuaded that the legislative history of Title I shows that Congress intended full enforcement of Title I rights, and that the importance of these rights overrides the effects that the suits we permit here will have on Title IV.

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[19] This holding makes it unnecessary to consider whether the Ninth Circuit's ruling in *Kupau* v. *Yamamoto*, 622 F.2d 449, 456 (9th Cir. 1980), that a court may have jurisdiction to order a new election even after the first election is already completed—if the Title I claim also accrues after that time—is also the law here.

II. *The Preliminary Injunction*

In addition to their jurisdictional attack, appellants also challenge the propriety of the preliminary injunction issued by the district court. On appeal of a preliminary injunction, the district court will be upheld unless it abused its discretion or applied improper legal or equitable standards. *Planned Parenthood League* v. *Bellotti*, 641 F.2d 1006, 1009 (1st Cir. 1981). The district court itself must make four findings in order to issue a preliminary injunction: the plaintiff will be likely to succeed on the merits of his claim, he will suffer irreparable harm if the injunction is not granted, issuance of the injunction will not cause more harm to the defendant than failure to issue would cause the plaintiff, and the public interest favors the injunction. *Id.* Appellants make essentially five arguments in contesting the findings made by the district court. First, the district court improperly found that plaintiffs were likely to succeed on the merits of two of their claims. Second, the injunction violated the traditional rule of equity that preliminary injunctions exist only to preserve the status quo. Third, the preliminary injunction granted effectively all the relief sought by plaintiffs, something a preliminary injunction should not do. Fourth, the terms of the injunction—prescribing in detail new nomination and election procedures—go well beyond remedying the probable violations found by the district court—defects in only the nominating process—and preventing harm to plaintiffs. Finally, the "stipulations" proposed by appellants for a new election—the apparent reason the injunction covered the election as well as the nomination process—did not justify the district court in so enlarging the injunction. With respect to appellants' final four arguments, we note that appellants appear to argue mainly that *any* injunction requiring a new nomination meeting and election would be invalid; as appears in the discussion below, some of the specific terms of the injunction are not offensive to appellants. We nevertheless do discuss some of the specific terms as well.

As to the evidence underlying the district court's conclusion that plaintiffs enjoyed a likelihood of success on two claims, we will affirm the findings unless the district court committed clear error. Fed.R.Civ.P. 52(a). The two factual events in which the district court found probable Title I violations were the exclusion of members from the nomination meeting for failure to show TITAN receipts and the refusal to include Lynch as a candidate for secretary-treasurer. Each event was said to violate both the equal rights and free speech provisions of Title I. Review of the record convinces us that these events were properly found likely to be incidents of discrimination and repression directed against certain dissident members in violation of Title I, not application of unreasonable rules to members generally in violation of Title IV. Plaintiffs introduced evidence showing that they represented an identifiable group of dissidents, that the TITAN receipt rule had not been implemented until the nomination meeting when dissident members were expected to appear, and that Lynch's nomination was incorrectly recorded as one for president, the only possible explanation for which was discrimination on the part of the incumbent, the only other candidate for secretary-treasurer. This evidence was sufficient to enable the district court to find that equal rights had probably been denied and that a purposeful attempt had probably been made to suppress dissent.

Admittedly, with respect to Lynch's nomination, Lynch himself testified that he was nominated for president. Appellants argue that this testimony and the "adverse inference" rule, *International Union, UAW* v. *NLRB*, 459 F.2d 1329, 1335-39 (D.C. Cir. 1972) (litigant's failure to produce relevant evidence within its control warrants inference that evidence is adverse to litigant), required the conclusion that Lynch's nomination was correctly recorded as one for president. We disagree. Other witnesses testified that Lynch was nominated for secretary-treasurer, and since all these witnesses were present at

the nomination meeting, the district court did not err in crediting their testimony over Lynch's. Nor was Lynch's testimony evidence exclusively in control of the plaintiffs who steadfastly refused to disclose it, as was the case in *International Union*. Finally, an adverse inference is generally discretionary, *id.* at 1339, so, even if one was proper in this case, the district court did not err in reaching a contrary factual conclusion. Appellants also offered other evidence tending to show that uniform rules were merely applied to the plaintiffs, but the district court's conclusion that plaintiffs' evidence was weightier was not clearly erroneous. We hold that the district court committed no clear error in finding that plaintiffs were likely to show that defendants' conduct in two instances violated the equal rights and free speech provisions of Title I.

Appellants' two most troubling arguments rest on two traditional precepts of equity jurisprudence: a preliminary injunction shall not alter the status quo, and it shall not grant the ultimate relief sought. These two doctrines are not entirely distinct, *see* H. McClintock, Handbook of the Principles of Equity § 15, at 33 (2d ed. 1948) (courts reluctant to issue mandatory preliminary injunctions because purpose of preliminary injunction is to preserve status quo); Leubsdorf, The Standard for Preliminary Injunctions, 91 Harv. L. Rev. 525, 534-35 (1978) (discussing connection in nineteenth century between status quo doctrine and reluctance of courts "to decree burdensome relief without a full hearing"), although the second is more clearly reflected in the federal rules, *see* Fed.R.Civ.P. 65 (a) (2) (requirements for consolidation of trial on merits with request for preliminary relief).

The traditional function of the preliminary injunction is to preserve the status quo, *e.g.*, *American Hospital Ass'n* v. *Harris*, 625 F.2d 1328, 1330 (7th Cir. 1980); *Diversified Mortg. Investors* v. *United States Life Title Ins. Co.*, 544 F.2d 571, 576 (2d Cir. 1976); *Morgan* v. *Fletcher*, 518 F.2d 236, 239 (5th Cir. 1975), so that the court

may retain its ability to render a meaningful decision on the merits, *Canal Authority* v. *Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). The status quo is the "last uncontested status which preceded the pending controversy," *Westinghouse Elec. Corp.* v. *Free Sewing Machine Co.*, 256 F.2d 806, 808 (7th Cir. 1958). Application of this doctrine is discretionary with the court, *see* H. McClintock, *supra*, § 15, at 33, however, and it cannot be mechanically applied. *National Ass'n of Letter Carriers* v. *Sombrotto*, 449 F.2d 915, 921 (2d Cir. 1971). The status quo in the instant case is the Local with its elective positions filled as they were before the nomination meeting and election. This situation works a continuing, irreparable harm to plaintiffs, though, because it allows individual defendants to achieve the purpose of their likely violations of plaintiffs' rights, to maintain themselves in office.[20]

> If the current existing status quo is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties, . . . by the issuance of a mandatory injunction, . . . or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.

Canal Authority v. *Callaway*, 489 F.2d at 476 (dictum). The district court faced a similar task: it had to pronounce such relief as would be agreeable to both parties and, if that was impossible, such relief as would prevent harm to plaintiffs without impinging unduly on defendants.

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[20] In view of the Local's probable violations, it cannot be supposed that invalidation of the results of the previous nominations and election would be enough, on the theory that the Local would now conduct a proper nomination meeting and election on its own.

We turn, then, to review of the shaping of the preliminary injunction.[21] On January 9, 1981, defendants filed proposed "stipulations"[22] with the district court as part of an offer to hold a new nomination meeting and election. The stipulations were substantially reflected in the preliminary injunction finally issued, paragraphs 3, 4, 5(a), 5(c), 5(d), 5(e), 5(f)(i), 5(f)(ii), 5(f)(iii), 5(g), 5(h), 5(j), 5(k), 5(l), and 5(m), *see* 521 F. Supp. at 636-38. The stipulations varied from the injunctions, however, in that the Local proposed that its supervisory body, Teamsters Joint Council 10, oversee the election (compare paragraphs 3, 5(j)), in that the Local also suggested that combined notice of nominations and election be mailed only twenty days beforehand (compare paragraph 4), and in that the district court modified the Local's suggested requirement of timely dues payments for candidates by discussing when payments were considered received and by excusing late payments of increases in dues (compare paragraph 5(f)(i)). Shortly thereafter, defendants proposed supplemental stipulations, one of which was incorporated in paragraph 5(e) of the preliminary order, and one of which was included as paragraph 5(f)(iv).

The district court on February 12, 1981, issued a proposed order that contained most of defendants' stipulations. In addition, the proposed order left open the identity of the supervisor of the nomination and election, provided that this unnamed supervisor would on request review the eligibility of members to be candidates, set out in greater detail the eligibility requirements for candidates, which included a grace period for late payment of dues increases that was not included in defendants' stipulations, declared the previous nominations and election null and void,

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[21] The injunction is reproduced as an appendix.

[22] Although we continue use of appellants' term "stipulations," these were not true factual stipulations narrowing the factual dispute but offers of settlement to which appellants agreed to be bound, if appellees so agreed.

and contained what in substance became paragraphs 5(b), 6, 7, 8, 9, and 10 of the preliminary injunction. Joint Council 10, defendants' choice as arbitrator, refused to supervise an election pursuant to any court order. Defendants, continuing to object to the district court's jurisdiction to issue an order and to the need for an order, also objected to the grace period for late payment of dues increases, the eligibility determinations by the arbitrator of the election because it usurped the union's internal procedures, and the injunction against defendants from violating the rights of members protected under 29 U.S.C. § 411. Meanwhile, the court continued to hold hearings, and both parties made further efforts to produce an acceptable order.

Plaintiffs on April 8, 1981, suggested some modifications to the proposed order, most notably provisions that Lawrence Katz and the Honest Ballot Association (HBA) arbitrate the nominations and election, that procedures for eligibility determinations to be made by the arbitrator be explained in greater detail, and that the Local pay the fees and costs of supervision and arbitration of the nomination meeting and election. Defendants objected, although not to the appointment of Katz and the HBA, but on April 21 these modifications were incorporated in a second proposed order. The only other significant additions in this order, in comparison to the first, were that disputes over candidate eligibility arising out of failure to pay dues increases were to be arbitrated and that the combined notice of nominations and election was to be mailed forty days beforehand.

This order apparently had its hoped-for effect: the parties together then offered further modifications. They agreed to the forty-day notice. They also suggested a precatory paragraph regarding verification of eligibility (now paragraph 5(*f*)(v) of the preliminary injunction), procedures for determining the eligibility of nominators, seconders, and candidates (now substantially paragraph

5(i)), a modification of the Local's liability for fees and expenses of the arbitrators (now paragraph 12), and omission of the second proposed order's provision for arbitration of candidate eligibility disputes involving failure to pay dues increases. The preliminary injunction followed on July 13, its only additional provision (the parties' joint suggestions having been accepted) being that plaintiffs were not required to post security.

This history persuades us that the district court constructed a preliminary injunction that effected as little change as possible from terms which defendants found acceptable where the status quo caused continuing harm to plaintiffs. The best course in such a case is for the parties to agree on a preliminary order, and many of the provisions of the injunction were included at the request of or with the agreement of the defendants, the objecting party here. Indeed, defendants appear to object specifically—we address elsewhere their general objection to any court-ordered election—only to two paragraphs of the injunction, 10 and 13, and to the parts of paragraph 5(f)(i) regarding the grace period for late payment of dues increases. They have not taken a position with respect to paragraphs 6, 7, and 8, but these paragraphs essentially repeat paragraphs 5(e), 5(f), and 5(l), respectively. Defendants' lack of objection to Katz and the HBA implies consent to paragraph 9. They otherwise agree to the terms of the injunction.

Defendants' objections to paragraphs 10 and 13 and part of 5(f)(i) are without merit in terms of the status quo doctrine. Paragraph 10 is entirely in keeping with the status quo; given the district court's finding that defendants probably violated 29 U.S.C. § 411(a)(1), (2), the injunction is proper and does not require conduct different from that that preceded the controversies here. Paragraph 13 is discussed below. This leaves the grace period for late payment of dues increases. Part of the case before the district court but not before us on appeal

(other than here) was an attack by plaintiffs on dues increases by the Local. The district court rejected defendants' motion to dismiss this claim, 521 F. Supp. at 630-32, but also found that plaintiffs had not shown any likelihood of success that would entitle them to preliminary relief on this claim, *id.* at 632-34. The merits of the claim have still to be decided. The grace period provision, requiring payment of the challenged dues increases but allowing them to be late, compromises the claim for purposes of the nomination and election. It thereby maintains as much as possible the status quo of the dues dispute, as well as of the Title I aspect of the case.

As a practical matter, the status quo requirement is not really applicable here. The nomination meeting was rigged; maintaining the status quo would do irreparable harm to plaintiffs. A supervised nomination meeting and election was the only relief possible. The district court sought admirably to construct an injunction with as few provisions as possible offensive to defendants.

The status quo doctrine also serves a common purpose with the doctrine that a preliminary injunction not grant the ultimate relief sought, the basis of appellants' third argument. This purpose is that relief requiring parties to change their conduct not issue until all parties, especially those to be enjoined, have had an opportunity to present their cases on the merits. The accepted doctrine is that a mandatory injunction—the equivalent of the "ultimate relief" the appellants complain about here—shall not issue before a final hearing. H. McClintock, *supra*, § 15, at 33. *See Miami Beach Fed. Sav. & Loan Ass'n* v. *Callander*, 256 F.2d 410, 415 (5th Cir. 1958) (mandatory injunction shall not issue unless facts and law are clearly in favor of applicant). At the heart of this reluctance to issue ultimate or mandatory relief is the concern that a defendant have notice of a claim against it and an opportunity to respond. *See Marshall Durbin Farms, Inc.* v. *National Farmers Organization, Inc.*, 446 F.2d 353, 356 (5th Cir.

1971) (Rule 65(a) requires notice and hearing). It would plainly be unfair and inequitable for a defendant to be enjoined in his conduct on the basis of a claim he has not had a full opportunity to respond to. This concern with due process is reflected in Fed.R.Civ.P. 65(a).[23] Under Fed.R.Civ.P. 65(a)(2), if an order granted after preliminary proceedings is characterized as final, then it is arguably invalid for the court's failure to give notice of consolidation. In the instant case, the district court did not label the injunction as final and apparently did not regard it as the final order in this case. Because compliance with the injunction—holding a new nomination meeting and election—will give plaintiffs nearly all the relief they seek, the preliminary injunction here should be subject to relatively strict notice and hearing standards.

The history of the development of the preliminary injunction in this case—reviewed above in the discussion of the status quo—reveals that the shaping of the injunction was attended with proper notice and hearing. Without repeating that history, we believe the record shows that defendants helped initiate the injunction in its present form, that the two proposed orders gave de-

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[23] Fed.R.Civ.P. 65(a) provides in relevant part as follows:

> (1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.
>
> (2) *Consolidation of Hearing With Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.

We note that, although a preliminary injunction is subject to a broad notice-and-hearing test, a final injunction may be issued from what was originally only a preliminary proceeding only when the court specifically advises the parties that the preliminary proceeding is being combined with the trial on the merits. *Penn* v. *San Juan Hospital, Inc.* 528 F.2d 1181, 1186-87 (10th Cir. 1975). In the instant case, the district court suggested consolidation, the appellants objected, and the matter was not further pursued.

fendants ample notice of the injunction's proposed terms, and that defendants had opportunity over several months to present contrary arguments and evidence. Defendants also had sufficient notice of plaintiffs' claims and opportunity to controvert them, as shown by their presentation of evidence on liability in March, 1981, several weeks after development of the preliminary injunction had begun.

With regard to appellants' fourth claim, that the injunction goes well beyond the violations found by the district court, we note first that the district court enjoys great discretion in framing preliminary injunctive relief because it must draft an order sensitive to the facts of the case. *See Continental Group, Inc.* v. *Amoco Chemicals Corp.*, 614 F.2d 351, 357 (3d Cir. 1980) (district court has discretion in performing "delicate balancing" required in preliminary proceeding). We observe as well that the probable violations concerned not merely the nomination meeting but also the election because the listing of a nominee among the wrong candidates tainted the election. Accordingly, a preliminary injunction in this case could order a new, supervised nomination meeting and election. As to the particulars of the injunction, as found above, the defendants had suggested or agreed to most of the provisions of the injunction. Most of these provisions cover procedural aspects of the nominations and election, and we believe the district court acted within its discretion in outlining the procedures in accordance with the suggestions of the defendants. Perhaps the most intrusive element of the injunction is the provision for arbitration of eligibility disputes. Defendants initially objected to such a provision, but they later "stipulated" with the plaintiffs for an arbitration procedure that appears in almost identical form in the injunction, so we do not think that the arbitration can be termed excessive. As to still objected-to portions of the injunction, paragraph 10 enjoins defendants from committing violations they were found likely to have committed before and is not

excessive, and the grace period provisions of paragraph 5(f)(i) are equally inoffensive because they amount to a temporary compromise of a related and unsettled dispute. Paragraph 13 is discussed below. We conclude that none of the specific provisions of the preliminary injunction are excessive.

The conclusion that the injunction did not exceed the remedy required for the violations found likely to exist renders largely unnecessary a discussion of appellants' final argument, that their stipulations did not justify so extensive an injunction. We emphasize, however, that we do not uphold the injunction on the theory that defendants were bound by their stipulations. Rather, we believe that it was within the district court's discretion to take the stipulations into account as indications of defendants' preferences and possible future conduct, facts that would affect the quality of relief ordered. The district court could properly conclude that a new nomination meeting and election were required, and in making the appropriate order it was entitled to consider the apparent desires of the parties. Appellants also suggest that their stipulations amounted at most to consent to subject-matter jurisdiction, an invalid basis for jurisdiction, but the district court based jurisdiction on the alleged violations, not on the stipulations.

III. *The Bond Requirement*

Appellants' final contention is that the district court erred in not requiring plaintiffs to post bond as required under Fed.R.Civ.P. 65(c).[24] The district court found the

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[24] Fed.R.Civ.P. 65(c) provides in relevant part as follows:

> (c) *Security.* No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

matter of a bond requirement to be within its discretion and to depend on its evaluation of four factors: the possible harm to the enjoined party if the order is unlawful, the likelihood of applicant's success on the merits, applicant's ability to post a substantial bond or surety, and the possible adverse impact that requiring substantial security might have on the enforcement of rights created by remedial legislation. A similar test was applied in *Natural Resources Defense Council, Inc.* v. *Morton*, 337 F. Supp. 167, 168-69 (D.D.C. 1971), *aff'd on other grounds*, 458 F.2d 827 (D.C. Cir. 1972), a case on which the district court relied in part. Applying these factors, the district court observed that the policy of the LMRDA was to encourage union members' suits to vindicate union democracy and that a bond requirement would affect such enforcement adversely. It also found that plaintiff had shown a substantial likelihood of success on the merits. The district court paid less attention to the harm defendants would suffer if the order was invalid, but it did comment that until this point all the defendants had used union funds to meet their legal expenses. As to plaintiffs' ability to post bond, the district court stated that having to post it "would impose a severe financial hardship upon them."

"[T]he conclusion seems inescapable that once the court decides to grant equitable relief under Rule 65 it must require security from the applicant." 11 Wright & Miller, Federal Practice & Procedure § 2954, at 524. The amount of required security is "in such sum as the court deems proper," Fed.R.Civ.P. 65(c), which has led some courts to conclude that the requirement is actually within the district court's discretion. *See Corrigan Dispatch Co.* v. *Casa Guzman, S.A.*, 569 F.2d 300, 303 (5th Cir. 1978) (per curiam); *Urbain* v. *Knapp Bros. Mfg. Co.*, 217 F.2d 810, 815-15 (6th Cir. 1954), *cert. denied*, 349 U.S. 930 (1955). Whether bond is required subject to exceptions or is discretionary, Rule 65(c) has spawned essentially two lines of cases that, taken together, illuminate the

considerations relevant to the bond requirement. In the first, a bond is required where the injunction exposes the defendant to a risk of monetary loss. *System Operation, Inc.* v. *Scientific Games Development Corp.*, 555 F.2d 1131, 1145-46 (3d Cir. 1977); *see Reinders Bros.* v. *Rain Bird Eastern Sales Corp.*, 627 F.2d 44, 54 (7th Cir. 1980); *International Controls Corp.* v. *Vesco*, 490 F.2d 1334, 1356 (2d Cir.), *cert. denied*, 417 U.S. 932 (1974). The nature of monetary loss is not fully explained: these cases all involve commercial or financial transactions. These cases are also in some conflict as to the effect of failure to require a bond. Failure has constituted reversible error, but only as an alternative ground. *System Operations, Inc.* v. *Scientific Games Development Corp.*, 555 F.2d at 1145-46; *Telex Corp.* v. *IBM*, 464 F.2d 1025, 1025-26 (8th Cir. 1972) (per curiam). Where the injunction is otherwise upheld, the case has been remanded solely for reconsideration of the bond requirement. *Reinders Bros.* v. *Rain Bird Eastern Sales Corp.*, 627 F.2d at 54. In the second line, no bond is required in suits to enforce important federal rights or "public interests." *Bartels* v. *Biernat*, 405 F.Supp. 1012, 1019 (E.D. Wis. 1975); *Bass* v. *Richardson*, 338 F. Supp. 478, 491 (S.D. N.Y. 1971); *Natural Resources Defense Council, Inc.* v. *Morton*, 337 F. Supp. 167, 168-69; 11 C. Wright & A. Miller, *supra*, § 2954, at 528-31. The rights prosecuted in these cases arose out of comprehensive federal health and welfare statutes, and this may distinguish them by "importance" from other federal statutory rights. Moreover, some of these cases involved indigent plaintiffs, from whom it would be unjust to require security. *See Bartels* v. *Biernat*, 405 F. Supp. at 1019; *Bass* v. *Richardson*, 338 F. Supp. at 491; 11 C. Wright & A. Miller, *supra*, § 2954, at 528.

These cases suggest to us that a district court should take into account the following factors in deciding whether to require a bond. First, at least in noncommercial cases, the court should consider the possible loss

to the enjoined party together with the hardship that a bond requirement would impose on the applicant. Applicants in commercial cases—merchants, manufacturers, and others—can be assumed capable of bearing most bond requirements, so hardship to them is less of a factor. Second, in order not to restrict a federal right unduly, the impact that a bond requirement would have on enforcement of the right should also be considered. One measure of the impact lies in a comparison of the positions of the applicant and the enjoined party. A bond requirement would have a greater adverse effect where the applicant is an individual and the enjoined party an institution that otherwise has some control over the applicant than where both parties are individuals or institutions.

Three of the factors that the district court applied—burden of compliance on defendants, plaintiffs' ability to pay, and impact on plaintiffs' rights—reflected these considerations; the likelihood-of-success factor did not. This last is already adequately accounted for in the decision whether to grant preliminary relief at all and generally seems to be irrelevant to the issue of a bond requirement.[25]

The district court generally made the appropriate inquiries in determining whether to require security, and, we believe, it also reached appropriate factual conclusions that militated against a bond. No great burden will be imposed on appellants, even in the absence of security, particularly because the institutional appellant, the Local, whose contributing members include plaintiffs, will bear the cost of compliance. Plaintiffs, by contrast, are certainly less able to afford security. Finally, a bond requirement would affect enforcement of Title I rights adversely because individual union members are at a great financial disadvantage in litigating against unions. The

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[25] In cases where the likelihood of success is extraordinarily high, this factor may be an additional reason not to require a bond. The instant action, however, is not such a case, and we have no occasion to address the scope of this sometime factor.

plaintiffs' likelihood of success is irrelevant here, but because it, too, cuts against a bond requirement, it is not necessary to remand the question to the district court to weigh only the three other factors. The district court acted within its discretion in not requiring a bond.

The order of the district court is affirmed.

CAMPBELL, *Circuit Judge* (Dissenting). I disagree with the court's interpretation of the statutory scheme. While I can appreciate the difficulty of discerning Congress's intent in this puzzling area, and while I understand why the district court felt that the union election in question was improper, I am unable to read Title I as extending so far as to allow a district court, once balloting has commenced, to invalidate an election and order a new one under its supervision and under terms and conditions extemporized by the court and parties.

I might feel differently if the problem arising in the original election were such as could be cured without setting aside the first election and without holding a new one. For example, if the matter at issue were whether to count certain ballots, it could be that an order to count, or not count, would be authorized under Title I, even though the voting had commenced and the election were in progress. But given the fact that Title IV provides certain procedures for rerun elections, in which the Secretary of Labor is given a special role, I think it unreasonable to derive from Title I the authority to order some other sort of rerun election, excluding the Secretary, in cases where the complaining party reaches the courthouse door before all the ballots are counted.

The resolution this court now adopts—based on a determination that until the ballots are counted the election is not "already conducted," and that sweeping judicial relief (to the point of ordering a brand-new election under

whatever machinery suits the court) is appropriate—seems to me to be both unprecedented and beyond the contemplation of the statute. Congress, as previously noted, provided a special mechanism for holding rerun elections, with the Labor Secretary to administer the election under supervision of the court. The Supreme Court has said that the purpose of this mechanism is to minimize judicial intrusiveness into union elections and to utilize the Secretary's special expertise. In *Calhoon* v. *Harvey*, 379 U.S. 134, 140 (1964), for example, the Court recognized the congressional intent "to utilize the special knowledge and discretion of the Secretary of Labor." *Calhoon*'s emphasis on non-intrusiveness into union elections should be especially instructive for us here. *Wirtz* v. *Glass Bottle Blowers Association*, 389 U.S. 463, 470-71 (1968), also speaks of "Title IV's special function" in safeguarding the election process; the Title IV enforcement method was described as a legislative compromise between this policy and that of avoiding undue intrusiveness. Again, this should caution us against opening the door to ordering new elections under court supervision under a different format than that authorized by the union's own rules. To say that rerun elections can be ordered without Title IV's special safeguards if only the final ballot has not been counted seems to me to trench heavily into the congressional design as construed by the Court.

The rule this court now establishes would allow relief under Title I (ordering and supervising a new election) which heretofore has existed only under Title IV. I believe that the proper accommodation between Title I and Title IV requires consideration not only of the stage which the election process has reached but the nature of the relief. If a new, supervised election is required, many concerns argue against finding Title I jurisdiction: intrusiveness, delay, disruption, and the court's lack of expertise in this area, especially as compared to the Secretary. Moreover, it makes little sense for there to be two

potential rerun formats, the choice to depend on the fortuity whether the first election is invalidated before or after its completion. On the other hand, where no new election is required—for example, where only additional ballots have to be sent out—these concerns are not nearly so great. I therefore think that whether an election was "already conducted" should be determined, in part, by looking to the relief requested. This functional approach is suggested in a note in the Columbia Law Review, "Pre-Election Remedies Under the Landrum-Griffin Act," 74 Colum. L. Rev. 1105, 1124 (1974). Comments elsewhere also describe the disruptive effects of new court-ordered elections. They may be read as implicitly adopting (or at least approving) something like the approach I suggest, for they state that pre-election relief for Title I violations will not intrude upon or disrupt internal union procedures. *See* Note, "Union Elections and the LMRDA," 81 Yale L.J. 407, 558-59 (1972); Comment, "Titles I & IV of the LMRDA," 42 U. Chi. L. Rev. 166, 179 (1974); James, "Union Democracy and the LMRDA," 13 Harv. C.R.C.L. L. Rev. 247, 316-17 (1978).

The language of the statute itself lends further support to the formulation I favor. Section 483 states first that no union "shall be required by law to conduct elections of officers . . . in a different form or manner than is required by its own constitution or bylaws, except as provided by" Title IV. This should caution us to be wary of sanctioning new elections under court-imposed rules. The statute goes on to set up a dichotomy between the time "prior to the conduct" of an election, when "existing rights and remedies to enforce the constitution and bylaws" of the union are enforceable, and the time after an election is "already conducted," when only Title IV is available for "challenging an election." It seems to me that what plaintiffs are doing here really is challenging an election: they want this one thrown out, and everything begun over again. This will always be true when a new election is required. Thus, an approach looking to

the remedy seems a sensible way of deciding whether an election has already been conducted for the purposes of this statute, since the statute itself speaks of challenging the election. Moreover, Title IV explicitly gives the Secretary the power to supervise a new election after a court determination of a violation. *See* section 482(c). Title I, on the other hand, while containing a catch-all provision allowing for "appropriate" relief, including injunctions, contains no explicit reference to court supervision of an election. *See* section 412.

The approach suggested would have several benefits: it would respond to the concerns of Congress and the Supreme Court, and it would be flexible, not sanctioning court supervision of elections under Title I, but not prohibiting swift relief under Title I for violations that may be cured without a new election. This would also correspond to the dividing line between the courts' and the Secretary's expertise and areas of effectiveness.

Accordingly, I respectfully dissent from the decision and judgment of the court.

APPENDIX

July 13, 1981

PRELIMINARY INJUNCTION

For the reasons stated in the accompanying Memorandum, it is hereby ORDERED and DECLARED that:

1. The order entered by the court on December 12, 1980 is modified as set forth below.

2. The nominations received at the November 9, 1980 meeting of defendant Local 82, and the election originally scheduled to be completed on December 13, 1980, are legally without effect pending further order of this court. The ballots from that election shall remain in the custody of an officer of this court.

3. Local 82 shall provide for a nomination meeting and mail ballot election for the officers of Local 82, to be supervised and conducted by Lawrence Katz, Esquire, in conjunction with the Honest Ballot Association of New England ("the Arbitrators") in accordance with paragraph 9 of this order. The nomination meeting shall be held within 80 days of the entry of this order. Subject to applicable law and this order, the nomination meeting and election shall be conducted in accordance with the Constitution and By-laws of Local 82, and the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

4. Under the supervision of the Arbitrators, Local 82 shall mail each member a combined notice of the nomination meeting and election at his last known home address at least 40 days before the date of the nomination meeting, and, in addition, shall mail notices for posting at least 40 days before the date of the nomination meeting to the stewards or, if there is no steward, to the employer, at the facilities of all employers that have collective bargaining agreements with Local 82.

5. The combined notice of nomination and election will contain the following information:

(a) The date, time and place of the nomination meeting.

(b) A declaration that:

> The purpose of this meeting will be the nomination of officers for Local 82. After hearings in the Federal District Court, the incumbent officers of Local 82 have offered to have, and the court has ordered, a new election, which will be conducted by a third party in order to assure that the nominations and election are conducted in a fair and orderly fashion.

(c) The list of offices to be filled: President and Business-Agent, Vice-President, Secretary-Treasurer and Business-Agent, Recording Secretary, and three Trustees, all of whom together constitute the Executive Board.

(d) The officers elected in the upcoming election will complete the term of office which commenced on January 1, 1981 and which will expire on December 31, 1983.

(e) The eligibility requirements for members to attend the nominations meeting: Every member whose dues are paid up through the month before the month in which the nomination meeting is conducted has the right to attend the nomination meeting. Members may be admitted to the nomination meeting upon presentation of a TITAN computer receipt showing payment through the prior month or upon presentation of a TITAN receipt supplemented by payment at the door or payment evidenced by a temporary receipt, which TITAN receipt and other evidence taken together verify payment of dues through the prior month. Local Union officers, or their designated agents, shall receive dues payments at the door and shall issue temporary dues receipts therefor.

(f) The eligibility requirements to run for office:

(i) Every member in good standing, by the payment of his dues on or before the last business day of the current month, in accordance with the International Constitution, who has been in such continuous good standing for each consecutive month in the twenty-four (24) month period immediately prior to nominations, shall be eligible to hold office if otherwise qualified under the International Constitution, Local By-Laws and applicable law. Dues are considered to have been received by the Local Union when they are in the physical possession of the Union or its authorized agent. Thus, dues paid by mail are received when the dues are delivered to the Union; dues paid in person at the Union are received at the time tendered; and dues paid to a steward, business agent, or other authorized collection agent are received when paid to the agent. Payment of dues after their due date does not restore good standing status for such month in computing the continuous 24 month good standing status as a condition of eligibility for office. However, a member who has made an incorrect dues payment in any month in which the rate of dues has been changed shall be considered in good standing for the month(s) in question so long as he paid the difference in the rates of dues owed to the Local Union before the start of the nomination meeting scheduled under the order of this court.

(ii) A member otherwise qualified to run for office must be nominated at the nomination meeting by a member in good standing other than the nominee and seconded by a member in good standing other than the nominee. A member is entitled to nominate or second the nomination of only one candidate for each office.

(iii) The 50% meeting attendance eligibility requirement contained in Article VI of the Local Union By-Laws is waived for this nomination and election.

(iv) In order to be nominated for office, a member must either be present at the nomination meeting to accept the nomination or must have a signed statement indicating his acceptance of nomination for a particular office delivered to the presiding official at said meeting.

(v) Members intending to run for office are urged to verify their own eligibility as well as the eligibility of their potential nominators and seconders prior to the nominations meeting by making a request, in writing, to the Arbitrators. The Arbitrators shall render decisions concerning the eligibility of any candidate, nominator, or seconder, in accordance with the procedures set forth in paragraph 5(i) of this notice.

(g) The nomination and election rules are set forth in the Local By-Laws and International Constitution which are available for inspection at the Local 82 offices and may be purchased upon payment of $.50.

(h) All officers and business agents elected in the forthcoming election shall, by virtue of such election, be delegates to any International Convention which may take place during their term of office, and the officers elected in the forthcoming election shall be delegates to all Teamster subordinate bodies and all other conventions in accordance with the provisions of Article II, Section 4(f) and Article III, Section 5 of the International Constitution.

(i) Any member may request in writing that the Arbitrators review his eligibility to hold office, or to participate in the nominations meeting as a nominator or seconder at any time after the mailing of the notices of the nominations meeting and before the nominations meeting. The Arbitrators shall make a report on the eligibility of that member within seven days thereafter to any interested member. Any member may challenge

the determination of the Arbitrators that a member is either eligible or not eligible to be a candidate for office, or be a nominator or seconder at the nominations meeting. Any challenge to a decision of the Arbitrators must be made, in writing, within two days of the Arbitrators' decision and must set forth the ground on which the challenge is based. The Arbitrators shall hear the challenge and make a written determination within five days of receiving the challenge. Any member asserting that the Arbitrators' determination of the facts underlying his claim for eligibility is not supported by substantial evidence must file a request to set aside the Arbitrators' decision with the Arbitrators within five days of the decision, for transmittal to the court along with a report by the Arbitrators.

After the nominations meeting, the Arbitrators shall review the eligibility of any candidate whose eligibility had not previously been determined and shall make a determination of each such candidate's eligibility within 48 hours of the nominations meeting. If, following the nominations meeting, the Arbitrators determine that a candidate is ineligible, he shall notify the candidate by telephone within 48 hours of the nominations meeting and shall confirm this communication to the candidate in writing. In addition, the Arbitrators shall notify counsel for the plaintiffs and defendants by telephone of the eligibility determinations made following the nominations meeting, within 48 hours of the nominations meeting, and shall confirm this communication to counsel in writing. Challenges to the decisions of the Arbitrators concerning the eligibility of the nominees must be filed, in writing, with the Arbitrators within 48 hours of the Arbitrators' decision and must set forth the specific basis upon which the challenge is made. The Arbitrators shall hear the challenge and make a written determination within 7

days. Any member wishing to appeal the determination of the Arbitrators must file a request to set aside the Arbitrators' decision with the Arbitrators within 48 hours of the decision for transmittal to the court along with a report by the Arbitrators.

j. All arrangements for distribution of campaign literature shall be made by the Arbitrators consistently with the By-Laws, International Constitution and applicable law.

k. The election shall be conducted by mail ballot. The notice will specify the date ballots and other election materials and instructions will be mailed, the date and time ballots will be collected for counting, and the location of the ballot count. The notice will also specify that voting packets will be mailed to each member's last known home address at least 20 days before the counting of the ballots. The notice will describe the procedure to be followed to obtain a ballot if the member does not receive a ballot in the mail. If two ballots are received from the same member, both will be declared null and void and not counted.

l. A member's vote will be counted only if he has paid his dues through the month prior to the month in which the election is held. Members may pay their dues before the close of business at 5:00 p.m. on the day before the counting of the ballots.

m. Each candidate, at his own expense, shall have the right to have an observer other than himself present for the mailing of ballots, the removal of ballots from the post office, and the subsequent counting of the ballots.

6. All members meeting the eligibility criteria set forth in paragraph 5(e) shall be permitted to attend the nominations meeting.

7. All members meeting the eligibility criteria set forth in paragraph 5(f) shall be permitted to run for office.

8. All members meeting the eligibility criteria set forth in paragraph 5(l) shall be permitted to vote.

9. The Arbitrators seeking to supervise and conduct the nominations and election required by this order shall file an undertaking with the court indicating their consent to the terms and conditions of this order, and in addition, shall:

a. Provide for the designation of an official to answer inquiries and make reports on members' eligibility to hold office as set forth in paragraph 5(i).

b. Make all arrangements for distribution of campaign literature as set forth in paragraph 5(j) of this order.

c. Ensure that no member of the Arbitrators who participates in the supervision or conduct of the nomination and election required by this order shall have any interest in the outcome of the election.

10. Defendants Bart A. Griffiths, George Harris, and Local 82 are enjoined from violating the equal rights of members of Local 82, guaranteed by 29 U.S.C. § 411,

(a) to nominate candidates in the election to be conducted in accordance with this order, to vote in the election, to attend all meetings of Local 82 in which business related in any way to this election is conducted, and to participate in the deliberations and voting upon business of such meetings, subject to the rules and regulations of the constitution and bylaws of the union;

(b) to meet and assemble freely with other members and to express any views, arguments, or opinions relating to the nominations and election to be conducted in accordance with this order, and to express, at meetings of Local 82 in which business is conducted relating in any way to this election, any views upon candidates or upon any business properly before such meetings, subject to the rules and regulations established in this order and in the rules

and regulations of the constitution and bylaws of the union.

11. This order shall remain in effect until further order of this court.

12. Local 82 shall pay the fees and expenses incurred by the Arbitrators in discharging their responsibilities under this order in the amount determined by the Court and shall advance to the Arbitrators the amounts necessary to cover the postage required to mail the notices and balloting materials necessitated by this order.

13. Plaintiffs are not required to post a security under Fed. R. Civ. P. 65(c).

Robert E. Keeton
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 81-1545

JEROME CROWLEY, ET AL.,
Plaintiffs, Appellees,

v.

LOCAL NO. 82, FURNITURE and PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, and PACKERS, ET AL.,
Defendants, Appellants,

RAYMOND J. DONOVAN, SECRETARY of LABOR, U.S. DEPT. of LABOR,
Intervenor.

JUDGMENT

Entered: May 21, 1982

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ Dana H. Gallup
Clerk

[cc: Messrs. Witlen, Pressman, and Ms. Webman]

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 81-1545

JEROME CROWLEY, ET AL.,
Plaintiffs, Appellees,

v.

LOCAL NO 82, FURNITURE and PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, and PACKERS, ET AL.,
Defendants, Appellants.

RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,
Intervenor.

Before COFFIN, *Chief Judge*,
CAMPBELL, BOWNES and BREYER, *Circuit Judges*.

ORDER OF COURT

Entered June 15, 1982

The petition for rehearing and the suggestion for rehearing en banc filed on June 4, 1982, are hereby denied.

By the Court:

/s/ Dana H. Gallup
Clerk

[cc: Mss. Noonan, Webman, Messrs. Pressman and Witlen.]

APPENDIX E

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

TITLE I
BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

BILL OF RIGHTS
(29 U.S.C. 411)

Sec. 101. (a) (1) Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of Speech and Assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, Initiation Fees, and Assessments.—Except in the case of a federation of national or international labor organizations, the rate of dues and initiation fees pay-

able by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constitutent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

* * * *

(5) Safeguards Against Improper Disciplinary Action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable

time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

CIVIL ENFORCEMENT
(29 U.S.C. 412)

Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

TITLE IV
ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES
(29 U.S.C. 481)

Sec. 401. (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the

suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall

be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

ENFORCEMENT
(29 U.S.C. 482)

Sec. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any

provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to

be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

APPLICATION OF OTHER LAWS
(29 U.S.C. 483)

Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 80-2680-K

JEROME CROWLEY, *et al.*,
Plaintiffs

v.

LOCAL NO. 82, *et al.*,
Defendants

December 12, 1980

TEMPORARY RESTRAINING ORDER

For the reasons stated in the court's Memorandum of this date, and in order to avoid irreparable harm to the plaintiffs and preserve both the status quo and the jurisdiction of this court, it is hereby ORDERED that, pending further order of this court:

The ballots to be received by Local 82 from P.O. Box 530, East Milton, Massachusetts, on December 13, 1980 at 9:00 a.m. and any other ballots received by Local 82 in any other way shall not be counted but shall be collected, sealed, and delivered immediately thereafter to an officer of this court in whose custody they shall remain until further order of the court. If the court determines, after hearing, that the ballots collected on December 13, 1980 should be counted, they shall be counted under the same conditions and limitations prevailing on December 13, 1980, unless otherwise ordered by the court.

It is further ordered that the following notice be read to those in attendance for the previously scheduled opening and counting of ballots:

By order of the United States District Court for the District of Massachusetts the ballots received by Local Union No. 82 from P.O. Box 530, East Milton, Massachusetts on December 13, 1980 at 9:00 a.m. shall be sealed, secured, kept within the control of the court, and not counted until further order of this court.

If the court determines, after hearing, that the ballots collected on December 13 shall be counted, then unless otherwise ordered by the court they shall be counted under the same conditions and limitations which prevailed on December 13, 1980.

/s/ Robert E. Keeton
United States District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civ 82-811 PHX-EHC

FRANK CANEZ, *et al.*,
Plaintiffs,

v.

EDWARD GUERRERO, *et al.*,
Defendants.

MEMORANDUM AND ORDER

On May 28, 1982, Plaintiffs, individual members in good standing in the Construction, Production & Laborers' Union Local No. 383, filed a complaint under the Labor-Management Reporting and Disclosure Act ["LMRDA"], 29 U.S.C. § 401 *et seq.*, against (1) the individual officers and executive board members of Local 383, (2) the affiliated International Union, (3) Local Union 383 and (4) William Soltero, Sr. The complaint alleges that the Defendants conduct with respect to the regularly scheduled election of union officers, presently set to begin on Monday, June 7, 1982, and continue to Saturday, June 12, 1982, has denied them the "equal rights and privileges to nominate candidates and to vote in elections. . ., to attend membership meetings and to participate in the deliberations and voting [of] the business . . ." of Local 383, in violation of Title I of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 411-415.

On May 28, 1982, the Court entered an order requiring Defendants to appear and show cause on Thursday,

June 3, 1982, why a temporary restraining order and preliminary injunction should not be entered prohibiting Defendants from "any action or conduct in contravention of the Labor-Management Reporting and Disclosure Act". In accordance with this order, an evidentiary hearing was held on June 3, 4 and 5, 1982, at which all parties appeared represented by counsel.

The Court has considered Plaintiffs' verified complaint and amended complaint seeking injunctive relief, all relevant material filed in support of such application, the testimony of Plaintiffs' witnesses and exhibits admitted in evidence by Plaintiffs. Defendants specifically deny Plaintiffs' allegations made herein. However, in light of the immediacy of the election Defendants have agreed to the provisions of the preliminary injunction without consenting to the Court's jurisdiction or findings of fact contained in this memorandum, or waiving their right to present evidence at any subsequent proceeding in this case.

The Court has concluded based upon the present record that (1) jurisdiction over this matter is conferred on this Court pursuant to Title I of the LMRDA, 29 U.S.C. § 412, and (2) a preliminary injunction in the form of a supervised election must issue. The terms of such injunction are embodied in a separate document attached to this Memorandum entitled "Preliminary Injunction."

I. *JURISDICTION*

Title I of the LMRDA, embodies the "Bill of Rights" for rank and file union members and guarantees, among other things, that all members shall have "equal rights and privileges" to participate in the nomination and election of candidates. Specifically, Title I was enacted to provide union members with rights parallel to those guaranteed by the United States Constitution in order to further the Act's "primary objective of ensuring that unions would be democratically governed and responsive

to the will of their memberships." *Finnegan v. Leu*, —— U.S. ——, 50 U.S.L.W. 4480, 4481 (decided May 17, 1982 by the United States Supreme Court) (citations omitted). The enforcement of Title I rights is conferred upon the district courts pursuant to 29 U.S.C. § 412.

Title IV of the LMRDA, 29 U.S.C. § 481 *et seq.*, guarantees that any member in good standing has the right to become a candidate for union officer and protects union members from the application of unreasonable rules. *Crowley v. Local No. 82*, slip op. No. 81-1545 (1st Cir. decided May 21, 1982). Enforcement of these rights are within the exclusive jurisdiction of the Secretary of Labor.[1]

Plaintiffs contend that the claimed violations fall squarely within this Court's Title I jurisdiction. In response, Defendants argue that the claimed violations are more properly characterized as Title IV matters and are thus within the Secretary's exclusive jurisdiction, and beyond the scope of this Court's jurisdiction. The Court is of the opinion that Plaintiffs have alleged both Title I and Title IV matters. Nevertheless, the presence of legitimate Title I claims is sufficient to confer federal jurisdiction pursuant to 29 U.S.C. § 412 on this Court.

The Court concludes that Title I jurisdiction may properly be exercised based upon the following:

1. Procedures followed at the May 8, 1982, nominating meeting violated due process and discriminated against persons seeking to be nominated and run against incumbent office holders. Such procedures allowed incumbents to be listed first for each office on the official ballot.

---

[1] This memorandum will not address various provisions in Local 383's constitution which appear to present clear violations of Title IV of the LMRDA. Cf. *Crowley v. Local No. 82, etc.*, 521 F. Supp. 614 (D.Mass. 1981).

2. The restraints placed by the incumbents with respect to the free and full discussion of material issues before the membership at the May 22, 1982, "monthly meeting", regarding the election date and hours, and the polling places.

3. The effective disenfranchisement of portions of the union membership, including dissidents, resulting from the timing of the election by the incumbent officers and notice of such election to union membership. The schedules for such election and notice served to reduce the number of potential voters for those opposing incumbents.

4. The historic pattern of intimidation directed at individual members who oppose the incumbent officers. This pattern dates back to the June 1979, election and has continued up to the present. The acts of intimidation include (a) condoning if not encouraging the massing of members supporting the incumbent officers in the immediate proximity of the voting area; (b) encouraging drinking in the immediate vicinity of the voting area, (c) distributing pro-incumbent materials at the entrance to the voting area, (d) assaulting individuals during the union meetings who oppose the incumbents, (e) preventing dissident members from speaking at union meetings, and (f) verbally abusing dissident union members who are able to speak at union meeting.

II. PRELIMINARY INJUNCTION

In the Ninth Circuit, a plaintiff meets its burden of proof with respect to the issuance of a preliminary injunction by demonstrating either of the following:

1. a combination of probable success on the merits and possibility of irreparable injury; or

2. that serious questions are raised and the balance of hardships tips sharply in its favor.

Los Angeles Coliseum Com'n. v. National Football, 634 F.2d 1197 (9th Cir. 1980).

For the reasons which follow, the Court finds that Plaintiffs have shown a likelihood of success on the merits and that irreparable injury will occur if the preliminary relief requested is not granted.

With respect to Plaintiffs' probable success on the merits, the testimony at the hearing established that Plaintiffs will very likely prevail on their claims that Defendants' conduct in setting the election procedures, dates and sites, and actions by Defendants at the May 22, 1982, monthly meeting violated their Title I rights. The election notices appear to have been prepared prior to the approval by the membership of such notices. Union members wishing to be recognized for the purpose of objecting to the matters contained in such notices were either not recognized, or not provided sufficient time to voice their objections. The notices which were mailed following the May 22, 1982, meeting have not been received to date by many union members eligible to vote. Dissident members were not afforded equal access to the election ballot to prepare sample ballots for their slates.

The Court finds further that if a preliminary injunction, in the form of a judicially supervised election, is not granted then despite the probable Title I violations, the June 7, 1982, election will be held, and Plaintiffs will be relegated to pursuing their post-election remedies while the incumbent officers remain in office. The Court agrees with the District Court's reasoning in *Crowley v. Local No. 82, Etc.*, 521 F.Supp. 614, 627 (D.Mass. 1981), that such a result constitutes irreparable injury and justifies the issuance of a preliminary injunction.

With respect to the bond requirement of Rule 65(c), F.R.Civ.P., the Court finds that as in *Crowley v. Local No. 82, Etc., supra*, the facts of this case do not warrant that Plaintiffs post bond.

Accordingly,

IT IS ORDERED that Plaintiffs' Application For A Preliminary Injunction is granted in accordance with the terms and conditions provided for in the preliminary injunction order attached hereto.

IT IS FURTHER ORDERED that this Memorandum and Order, excepting the preliminary injunction order attached, shall be sealed by the Clerk of this Court until the American Arbitration Association has certified the election results for Local 383. Such memorandum shall not be used by the parties for any election purposes.

Dated this 5 day of June, 1982.

/s/ Earl H. Carroll
United States District Judge

APPENDIX H

EXHIBIT 12

ELECTION OF OFFICERS AND BUSINESS AGENTS BY MAIL BALLOTS—THIS OFFICE PREPARES FOR A REFERENDUM THIS YEAR

Under authority granted to all Local Unions by action of the International Convention held June 14-17, 1976 in Las Vegas, Nevada, the Executive Board of Local 82 has authorized that this year Teamsters Local 82 will conduct the election for Executive Board Officers and Business Agents by means of a secret ballot by mail, thus affording members an unprecedented opportunity to vote for the candidates of their choice with a maximum of convenience, privacy and time to consider their decisions.

The International Convention adopted provisions of Article XXII, Section 4(b) which states "—the Local Union Executive Board shall have the authority to establish all rules and regulations for the conduct of the election to supplement the provisions of the International Constitution, including the authority to use mail referendum balloting without membership approval".

By unanimous action of the Local 82 Executive Board meeting held Tuesday, September 16, 1980, the decision was made to inaugurate an election by mail referendum because of the multitude of advantages the procedure offers members.

ELECTION RULES AND REGULATIONS

In Conformity With the
Teamsters International Constitution,
Article 6, Section 5(b) of Local By-Laws

APPLICABLE FEDERAL STATUTES

The International Constitution provides that:—

'The Election shall be held at such place or places and at such time, not earlier than thirty (30) days after the

NOMINATION MEETING, as may be decided by the Local Union Executive Board. The Local Union Executive Board shall have the authority to establish all rules and regulations for the conduct of the election to supplement the provisions of the International Constitution, including the authority to use mail referendum balloting or absentee balloting without membership approval.

"All Officers (and Business Agents) elected in the forthcoming election shall, by virtue of such election, be delegates to any International Convention which may take place during their term of office and the Officers elected in the forthcoming election shall be delegates to all Teamster subordinate bodies and all other conventions in accordance with the provisions of Article II, Section 4(f) and Article III, Section 5 of the International Constitution."

Therefore, pursuant to Article XXII, Section 4(b) and in accordance with instructions received from the International Union, the Executive Board has ordered that a General Election will be conducted by mail referendum with ballots to be counted at 9:00 A.M., Saturday, December 13, 1980. The Secretary-Treasurer will supply the Election Committee with a Post Office Box specifically set aside for receipt of mailed ballots, a check list and all other materials to safeguard the honest and fair conduct of such election.

Each candidate, duly nominated, shall be granted the right to be present and/or have an observer at the candidate's own expense present for the removal of ballots from the Post Office Box, at 9:00 A.M., Saturday, December 13, 1980, by the Election Committee and the counting of ballots subsequently in Union Headquarters, 142 Robertson Street, Quincy, Mass.

At least fifteen (15) days prior to the official counting of the secret referendum vote, each eligible member shall receive at his last known home address through the U.S.

Mail a packet containing 1) a ballot listing the names of all duly nominated candidates for the Executive Board and/or the position of Business Agent. The packet also shall contain 2) notice of election; 3) instructions for voting 4) a return envelope.

Each Candidate and/or their Observer are hereby notified that they have the right to observe the counting of the ballots by the Election Committee.

EXHIBIT 42

OFFICIAL BALLOT

LOCAL UNION No. 82

[SEAL]

Election of Officers
For a Three Year Term

MAIL BALLOT BACK BY
DECEMBER 12, 1980

SO YOUR VOTE WILL COUNT, YOUR DUES MUST BE PAYED FOR THE MONTH OF NOVEMBER

SEND DUES IN SEPARATE MAILING

OPEN AND MARK YOUR BALLOT

ELECTION DAY, DECEMBER 13, 1980

9:00 A.M.

COUNTING OF BALLOTS

TO VOTE FOR A PERSON, MAKE A CROSS (X) IN BOX TO THE RIGHT OF THE NAME.

President-Business Agent	Vote for One
George Harris (Incumbent)	☐
John J. Perry	☐
John P. Lynch	☐

Trustees	Vote for Three
Kevin Sullivan (Incumbent)	☐
Robert J. Byrnes	☐
Wilfred Pye	☐
Joseph Crowley	☐